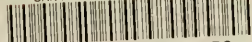


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NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT
2/01
POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
January 2, 2001
25 Van Ness Avenue, #70, Lower Level

JOSEPH GRUBB
EXECUTIVE DIRECTOR

AGENDA

DOCUMENTS DEPT.

LARRY BEACH BECKER
SHIRLEY A. BIERLY
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations,
members of the public shall be limited to comments of no more
than 3 minutes' duration.

- V. Consideration of Appeals

A. 2195 Sacramento #301, 303 AT2K0202
(cont. from 12/5/00)

The tenants appeal the decision granting certification of capital
improvement costs.

B. 523 - 29th Ave. AL2K0220

The landlord appeals the decision granting a claim of unlawful rent
increase.

C. 1700 Page St. #8 AT2K0213

The tenant appeals the remand decision denying a claim of unlawful rent
increase.

D. 2310 Powell #305 AT2K0215

The tenants in one unit appeal the decision certifying capital
improvement costs on the grounds of financial hardship.

E. 619 Clayton St. AL2K0216

The landlord appeals the decision granting a claim of unlawful rent
increase.

F. 1958 Golden Gate Ave., Apt. 3 AT2K0214

The tenant appeals the dismissal of his petition alleging decreased housing services and the landlord's failure to repair due to his failure to appear at the properly noticed hearing.

G. 2135 Sacramento St.

AL2K0217

The landlord appeals the decision partially certifying capital improvement costs, alleging that elevator work was in the nature of capital improvement.

H. 3018 Mission St.

AL2K0218

The landlord appeals the portion of the decision that finds elevator work to constitute repair, rather than capital improvement.

I. 899 Pine St. #110

AT2K0212

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

J. 154-156 Tiffany Ave.

AL2K0219

The landlord appeals the allocation of the cost of painting the exterior of the building.

K. 795 Geary St. #404

AT2K0221

The tenants in one unit appeal the decision certifying capital improvement costs on the grounds of financial hardship.

VI. Communications

VII. Director's Report

VIII. Old Business

Fair Return/Implementation of Prop. H
Quigg v. S.F. Rent Board (Superior Court Case No. 316928)

IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment



**MINUTES OF THE REGULAR MEETING OF WILLIE L. BROWN, JR.
THE SAN FRANCISCO RESIDENTIAL RENT MAYOR
STABILIZATION & ARBITRATION BOARD,**

1/2/01
SHARON K. WASSERMAN
PRESIDENT

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, January 2, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

POLLY MARSHALL
VICE-PRESIDENT

DOCUMENTS DEPT

JAN 10 2001

SAN FRANCISCO
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I. Call to Order

LARRY BEACH BECKER President Wasserman called the meeting to order at 6:11 p.m.

SHIRLEY A. BIERLY

DAVID GUSTAV GRUBER||.

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

Roll Call

Commissioners Present:

Becker; Gruber; Hobson; Lightner;
Wasserman.

Staff Present:

Gartzman; Grubb; Wolf.

Commissioner Marshall appeared on the record at 6:13 p.m.; Commissioner Justman arrived at the meeting at 6:21 p.m.; and Commissioners Mosser and Murphy appeared at 6:26 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 19, 2000.
(Becker/Gruber: 4-0)

IV. Remarks from the Public

The following individuals addressed the Board regarding implementation issues associated with Proposition H:

1. Nancy Tucker, the landlord involved in the case concerning 154-156 Tiffany Ave. (AL2K0219), asked the Board whether the Stay that had been issued on Proposition H meant that her tenants must pay the approved capital improvement passthrough.
2. Cynthia Arnold, a tenant who voted no on Proposition H, expressed her concerns regarding the "dilapidated" state of the Victorian that she lives in, and the possible daunting effect of the Proposition on her landlord's willingness to effectuate capital improvements.
3. George Buffington, a tenant facing a capital improvement passthrough, stated his belief that owners have to keep records for purposes of taxes and sale, and therefore Proposition H merely provides them an opportunity to obtain a fair return.

V. Consideration of Appeals

A. 2195 Sacramento #301, 303

AT2K0202
(cont. from 12/5/00)

The landlords' petition for certification of the costs of seismic retrofit of the building and a new roof, in addition to 7% base rent increases based on increased operating expenses, was approved for 13 of 16 units. Two tenants, who reside jointly in two units in the building, appeal on the grounds that: an amended Operating and Maintenance Expense schedule was not provided to the tenants prior to the hearing, which resulted in the tenants having been denied their due process rights; and the Board should exercise their discretion to waive the Regulations and allow for a longer and more reasonable amortization period for the seismic retrofit. Since the tenants had filed a substantially amended appeal one week prior to the meeting on December 5th, it was the consensus of the Board to grant the landlord's request for a continuance to this evening's meeting.

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Marshall/Lightner: 5-0)

MSF: To deny the appeal. (Gruber/Lightner: 2-3; Hobson, Justman,
Marshall dissenting)

MSC: To accept the appeal and remand the case to the Administrative Law Judge to allow the tenants to submit written objections to the amended Operating and Maintenance Expense Petition; a hearing will be held only if necessary. (Marshall/Hobson: 3-2; Gruber, Lightner dissenting)

B. 523 – 29th Ave.

AL2K0220

The tenant's petition alleging unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$4,254.12 due to a mis-calculation of allowable banking. On appeal, the landlord argues that: the rent increase in effect during the period 1992-1993 was confusing, due to the rate having changed; the tenant paid the increase without complaint for two years; the tenant had received no rent increase for seven years prior to the subject increase having been imposed; the improper increase was due to an arithmetic error; and the tenant has been given leeway when she was late in making rent payments.

After discussion, it was the consensus of the Board to continue this case in order for staff to identify the nature of the landlord's mistake in calculating the allowable banking.

C. 1700 Page St. #8

AT2K0213

The tenant's petition alleging unlawful rent increases was denied. On appeal, the tenant claimed that the Administrative Law Judge incorrectly stated in the Decision that the complete rent history for the unit is not available, and requested a determination of the lawful rent. The tenant's appeal was accepted and the case was remanded in order to check the rent history. In the Decision on Remand, the ALJ again determined that the tenant's rent is within limitations. On further appeal, the tenant submits a copy of a Rent Board Decision issued in 1991, showing her complete rent history.

MSC: To accept the appeal and remand the case to the Administrative Law Judge only for a Technical Correction as to the tenant's rent history and allowable banking. (Lightner/Gruber: 5-0)

D. 2310 Powell #305

AT2K0215

The landlord's petition for certification of the cost of a new roof to 168 units was granted, resulting in a monthly passthrough in the amount of \$28.69. Two tenants in one unit appeal the decision on the grounds of financial hardship.

MSC: Pursuant to the agreement of the landlord, to defer imposition of the approved capital improvement passthrough for one year. If the tenants wish an extension of the deferral beyond January 1, 2002, they must file another Tenant Hardship Application with the Rent Board by no later than December 1, 2001.
(Becker/Marshall: 5-0)

E. 619 Clayton St.

AL2K0216

The tenant's petition alleging unlawful rent increases was granted, and the landlord was found liable to the tenant in the amount of \$2,925.00. On appeal, the landlord asserts that the rent overpayment calculation should have credited the allowable increase amounts, and that she should not have to bear a cumulative penalty.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

F. 1958 Golden Gate Ave., Apt. 3

AT2K0214

The tenant's appeal was filed 26 days late because the tenant was out of town and preoccupied defending an eviction lawsuit upon his return.

MSC: To find good cause for the late filing of the appeal.
(Becker/Marshall: 3-2; Gruber, Lightner dissenting)

The tenant's petition alleging decreased housing services and the landlord's failure to repair was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing and provides proof of his having been out of town at the time the hearing was scheduled.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Marshall: 4-1; Gruber dissenting)

G. 2135 Sacramento St.

AL2K0217

The landlord's petition for certification of capital improvement costs to 27 of 36 units was granted, in part. The landlord appeals as to the disallowance of the \$7,486.25 cost of new elevator hoist cables, claiming that: the work meets the definition of a capital improvement; the cables will not need to be replaced again for 40 to 50 more years; and prolonging the life of the elevator prolongs the useful life of the building.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to determine whether any of the elevator work constitutes capital improvements; a hearing will be held only if necessary. (Marshall/Becker: 5-0)

H. 3018 Mission St.

AL2K0218

The landlord's petition for certification of capital improvement costs to 26 of 30 units was granted, in part. The landlord appeals as to the disallowance of several items of work done to the building's elevator systems, maintaining that: these items are not repairs but constitute capital improvements; work which prolongs the useful life of the property is just as much capital improvement as work that adapts the property to new uses; work that only needs to be done every ten years or more cannot be considered routine repair and maintenance; and the Decision flies in the face of previous Board decisions concerning elevator work.

MSC: To accept the landlord's appeal and remand the case to the Administrative Law Judge to determine whether any of the elevator work constitutes capital improvements; a hearing will be held only if necessary. (Marshall/Becker: 5-0)

I. 899 Pine St. #110

AT2K0212

The tenant's appeal was filed almost six weeks late because the tenant incorrectly believed that he had filed the appeal at an earlier date.

MSC: To find good cause for the late filing of the appeal.
(Lightner/Marshall: 5-0)

The landlord's petition for certification of capital improvement costs to 55 of 200 units was granted, in part. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Becker: 5-0)

J. 154-156 Tiffany Ave.

AL2K0219

The landlords' petition for certification of the costs of painting the exterior of the building was granted except that the costs for extraordinary decoration were deducted as constituting a "luxury" item. On appeal, the landlords assert that the costs of the paint job should be allocated based on the size of the units, rather than divided equally, because the tenants' unit is substantially larger than the one the landlords reside in; the tenants therefore derive greater benefit from the work; and there are four occupants in the tenants' unit, and only two in the landlords' unit.

MSF: To deny the appeal. (Marshall/Becker: 2-3; Gruber, Lightner, Justman dissenting)

MSC: To accept the appeal and remand the case to allocate the cost of the exterior painting based on the size of the units; a hearing will be held only if necessary. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

K. 795 Geary St. #404

AT2K0221

The landlord's petition for certification of the cost of a new roof to 27 of 48 units was granted, in part. Two tenants in one unit appeal the decision on the grounds of financial hardship, also objecting to all costs relating to the "ballroom", new lobby furniture, iron security grates, fencing, roof door, concrete driveway, electrical submetering, and claiming that the carpet pad in the unit deteriorated as a result of the work.

MSC: To accept the appeal and remand the case to ascertain whether any of the costs associated with the ballroom are being passed through to these tenants; a hearing will be held only if necessary.
(Marshall/Becker: 5-0)

MSC: To deny the appeal based on hardship.
(Lightner/Gruber: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a new staff roster.

VII. Old Business

Fair Return/Implementation of Prop. H

President Wasserman informed the public that a Preliminary Injunction staying the implementation of Prop. H without prejudice to the adoption of regulations by the Rent Board has been issued by Judge Robertson in the case of Quigg v. Rent Board (Superior Court Case No. 316928). After the Rent Board enacts Regulations, or takes other interim action, the Judge will decide whether to lift the Stay. Since the Court provided little in the way of guidance, President Wasserman said she is not sure how to "fix" the Proposition. She invited everyone to become part of the process, and asked for constructive suggestions with supporting argument. These can be furnished in writing and/or in person at the Board's Special Meeting on Proposition H which will be held on January 9th at City Hall, in Room 263.

The Commissioners then briefly discussed how to go about enacting regulations. Commissioner Becker said he thought that the Deputy City Attorney who is defending the lawsuit should proceed with input from staff. Commissioners Gruber and Lightner thought that the Board needed to provide guidance. Commissioner Mosser expressed a desire to have economists brought in to educate the Commissioners about the concept of fair return. Commissioner Marshall stated her belief that the Board would never agree on what constitutes a fair return, because it is a political concept. Commissioner Hobson said that it should not appear that the Board is delaying taking action on this. Commissioner Murphy said that he believes it "grossly unfair" for Ted Gullickson of the Tenants' Union to accuse the Board of "foot-dragging" when the Proposition was just adjudicated prior to the holidays.

IV. Remarks from the Public (cont.)

4. Rebecca Graf of the Housing Rights Committee said that the proponents of Prop. H are also frustrated, and will be submitting suggestions in writing. She suggested that the Board be flexible about the base year and allow landlords to file for hardship increases if they are operating at a loss. She

said that the Rent Board should hold off on certifying any more capital improvement passthroughs until this is resolved.

5. Tenant Michael Barrett suggested that the Rent Board waive their attorney-client privilege, and said that the Judge shouldn't be "making the call" since fair return is a subjective concept.
6. Ann Doherty of the Marina Cove Tenants' Association told the Board that the tenants in her building are subject to a 6.4 million dollar passthrough and need protection. She said that there should be a stay on both sides and the Board should hold off on any more hearings.
7. Tenant Carolyn Blair, who lives at the Northpoint Apartments, said that rents have doubled over the last five years and that it is obvious that landlords are making a fair return.
8. Tenant Arnold Cohn said that the Board should consult with the attorneys on staff, who have expertise in this area. He suggested that applying the 1-year T-bill rate to the gross rents of the building should yield a fair return.
9. Tenant Lorraine Calcagni of 1360 Lombard Street told the Board that it is frightening to be faced with the passthrough of almost 10 million dollars in costs; almost \$100,000 per tenant. Ms. Calcagni said that she owes thousands of dollars in retroactive increases.
10. Landlord Karen Crommie reminded the Board that capital improvement passthroughs are subject to a 10% yearly limitation and asked how retroactivity could be constitutional.
11. Tenant Vance Herring of 1550 Bay Street (Marina Cove) said that landlords are making a huge profit, and asked about retroactivity.
12. Landlord Nancy Tucker said that, while the proponents of Prop. H targeted big landlords, no exceptions were written in for small landlords.

The Board then held a brief discussion with Senior Administrative Law Judge Sandy Gartzman confirming that, at present, capital improvement petitions are being processed as they were prior to the passage of Proposition H. An informational paragraph is being added to all capital improvement decisions. This issue will be discussed further at next week's meeting on Prop. H.

VIII. Calendar Items

January 9, 2001 – **FAIR RETURN/IMPLEMENTATION OF PROP. H**
City Hall, Board of Supervisors Committee Room (Room 263)

January 16, 2001

11 appeal considerations (1 cont. from 12/5/00; 1 cont. from 1/2/01)
Old Business: Fair Return/Implementation of Prop. H

IX. Adjournment

President Wasserman adjourned the meeting at 8:26 p.m.

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

“Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City’s efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.”

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheel-chair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency’s compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government’s duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people’s review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT
9/01
POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
January 9, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Room 263, Board of Supervisors Committee Room
CITY HALL

01-03-01A11:18 RCY.

AGENDA

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- LARRY BEACH BECKER I.
- SHIRLEY A. BIERLY
- DAVID GUSTAV GRUBER II.
- FREDERICK HOBSON
- ANTHONY JUSTMAN III.
- MERRIE T. LIGHTNER
- NEVEO MOSSER IV.
- BARTHOLOMEW MURPHY

- Call to Order
- Roll Call
- Approval of the Minutes
- Vote on Whether to Go Into Closed Session Regarding the Case of
Quigg v. Rent Board (Superior Court Case No. 316928)
(Pursuant to S.F. Administrative Code Section 67.11{a})
- Closed Session re Quigg, supra
(Pursuant to Government Code Section 54956.9{a})
- Vote on Whether or Not to Disclose and Possible Disclosure of Any/All
Conversations Held in Closed Session Regarding Quigg, supra
(Pursuant to S.F. Administrative Code Section 67.11{a})
- Report on Any Actions Taken in Closed Session Regarding Quigg,
supra (Pursuant to Government Code Section 54957.1{a}{2} and
S.F. Administrative Code Section 67.14{b}{2})
- Remarks from the Public

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations,
members of the public shall be limited to comments of no more
than 3 minutes' duration.

- IX.
- X.
- XI.
- VIII.

- Communications
- Director's Report
- Old Business
- Fair Return/Implementation of Prop. H
- Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations,
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than 3 minutes' duration.

XII. New Business

XIII. Calendar Items

XIV. Adjournment

19/1

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MINUTES OF THE REGULAR MEETING OF WILLIE L. BROWN, JR.
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD, MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, January 9, 2001 at 6:00 p.m. at
Room 263, City Hall

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

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JAN 12 2001

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I. Call to Order

President Wasserman called the meeting to order at 6:10 p.m.

LARRY BEACH BECKER
SHIRLEY A. BIERLY
DAVID GUSTAV GRUBER II,
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Roll Call

Commissioners Present: Becker; Gruber; Hobson; Lightner; Marshall;
Mosser; Murphy; Wasserman.
Staff Present: Gartzman; Grubb; Lee; Wolf.

Commissioner Justman appeared on the record at 6:15 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 2, 2001.
(Gruber/Becker: 5-0)

IV. Remarks from the Public

Thirty-two persons addressed the Board regarding implementation issues relating to Proposition H, as follows below:

1. Tenant Sharon Thornton said that the voters passed Proposition H, and she doesn't "understand the scrutiny."
2. Landlord Renee Lorda asked whether any consideration would be given to the small property owner in terms of compensation for maintenance.
3. Tenant George Buffington said that landlords get a tax exemption for upkeep of their properties and that Proposition H doesn't demand old records, it merely provides landlords an opportunity to obtain a fair return.
4. Tenant Michael Barrett said that landlords receive a tax deduction for capital improvements; that fair return is a subjective concept, whereas the law is supposed to be objective; and that the Sunshine Ordinance demands that the Board waive their attorney-client privilege.
5. Landlord Peter Euteneuer questioned the retroactive application of Prop. H. Mr. Euteneuer performed substantial structural work costing \$600,000 on two buildings in 1998. He filed his petition in December of 1999, and received his Decision before the Election but after April 10th. He does not think it fair that Proposition H applies to him.

6. Ted Gullickson of the Tenants' Union said that the issue is not whether Prop. H is a good idea. The law was passed over two months ago, and it is incumbent upon the Board to pass regulations as quickly as possible.
7. Rebecca Graf of the Housing Rights Committee said that her organization is answering calls from tenants every day who do not know whether to prepare defenses to capital improvement petitions filed by their landlords. Ms. Graf said that the situation is confusing for landlords as well, and that tenants are "scared."
8. Robert Pender announced the revival of the Parkmerced Tenants' Organization (PRO); the new President is Carolyn Cohn. He told the Board it was their job to write regulations for Proposition H.
9. Landlord Marian Halley said that Prop. H is unconstitutional and can't be made to work. She suggested "turning our backs" on Prop. H, and having tenant and landlord groups come together to write something fair to all and not "aimed at the economic annihilation of landlords."
10. Spanish-speaking tenant Sara Perez expressed her concerns about where she is going to live and said that she has been waiting 3 years for subsidized housing.
11. Tenant James Mattern said that Prop. H passed and should be enforced.
12. Tenant Arnold Cohn said applying the 1-year T-bill rate on the gross rents of a building would guarantee a fair return; that the landlord should be allowed to choose the base year; and that, when there is a floor, there has to be a ceiling. He asked that the Board stop holding hearings until this is resolved, but expressed his view that "it can be done."
13. Tenant Lorraine Calcagni of 1360 Lombard said that Prop. H was written because of the situation faced by the tenants in her building, who have "been through hell and back." Ms. Calcagni said that her landlord is charging \$3,200 for a one-bedroom apartment and \$400 for a garage, and making unconscionable profits. She questioned the whereabouts of 5.7 million dollars in missing subcontractor invoices and asked that the Board give consideration to tenants in buildings where the work was done prior to the passage of Prop. H.
14. Prop. I landlord Peter Holden asked whether 1978 or 1993 would be the base year for those buildings. He told the Board that he didn't get records from the prior owner when he purchased the building, and that less than 10% of the buildings in San Francisco are covered under the seismic retrofit standard in Prop. H.
15. Tenant Ann Doherty of the Marina Cove Tenants' Association said that stopping hearings, payments and accruals is the only sensible response to the Stay on Prop. H. She said that no tenant in her building would settle with the landlord in light of Prop. H.
16. Tenant Jan Bulechek of Marina Cove said if tenants are going to have to wait for implementation of Prop. H, the Rent Board should wait to hold

hearings. She noted that it is hard for tenants to sustain a defense against a large landlord and said that the whole thing may be "moot."

17. Tenant Jose Morales told the Board to honor the will of the voters and said that "greedy landlords are creating huge social problems for the City." Mr. Morales believes that San Francisco should be an "eviction-free" city.
18. Tenant Robert Gordon told of his "shock" at receiving notice of a capital improvement hearing after Prop. H had passed. He doesn't believe tenants should be assessed for "owners' responsibilities", since landlords receive tax breaks, appreciation, and rent.
19. Landlord James Lew said that a fair return analysis should be based on the current market value of the property rather than 1978.
20. Landlord Bill Quan said the Board should be focusing on passing fair regulations, instead of passing regulations as quickly as possible. Since "many different variables" need to be taken into account, he suggested that the Board hire real estate, investment and economic professionals to come up with more than one "fair rate of return."
21. Landlord Sue Chang said that she called the prior owner of her building, who laughed when asked if she had records from 1978. She said that landlords can't write off the cost of improvements if there's no profit on the building. She expressed her dismay that there are "so many tenants with hateful feelings toward their landlords", and submitted a copy of a letter from one of her tenants asking that the Board provide an incentive for landlords to maintain their buildings.
22. Dave Chelsea-Seifert, Housing Specialist with the Tenderloin Housing Clinic, said that his job is to find housing for low-income, working families. He said that his clients will face extreme hardship if the Board delays.
23. Landlord Robin Levitt said that she is not opposed to Prop. H. However, prior to passage of the Initiative, she used to be able to pass on costs equally. Now, she says that her new tenants will be subsidizing the long-term tenants, and that the burden should be distributed more fairly. She asked that any new regulations be easier to follow than the old ones, and said that it took 9 months to get approval for a \$30 passthrough.
24. Janan New, Director of the S.F. Apartment Association, said that Prop. H was "poorly drafted" and impossible to incorporate into the Rent Ordinance. She suggested that representatives of the landlord and tenant communities get together to draft a compromise.
25. Tenant Angelique Duvall said that landlords should be able to get annual increases to cover the cost of operating the building. Since annual increases used to be 4%, and now are only 2.9%, Ms. Duvall said that she'd "go for 10%" too if she were a landlord.
26. Landlord Representative Al Goodwin said that there is "no way that this can be implemented legally or fairly." He said that if capital improvement passthroughs are eliminated, interest on funds borrowed should be allowed as an operating and maintenance expense.

27. Landlord Karen Crommie asked that when the Board enacts regulations, it remember the concerns of small landlords. She said that she and her husband bought their building for their retirement, and that all their savings are in that building. Her suggestion was to eliminate rent control, in which case there would be no passthroughs.
28. Landlord Scott Hall said that he can't do planned structural work because of the passage of Prop. H. If he adds bedrooms to the other two units in his building, he's "adding housing", but won't be able to raise the rent. He considers this "a new low." Since Mr. Hall is a CPA, he said he is available to tenants for consultations on tax deductions.
29. Landlord Dan Forkin said that he has always effectuated capital improvements without filing petitions, because he considered it his responsibility, and he "did ok on vacancies." However, since annual increases are "no longer sufficient", Mr. Forkin feels that every option is now closed and that property ownership is "too great a risk."
30. Landlord Gary Briggs owns a 1907 building which needs "lots of upkeep and maintenance." Mr. Briggs feels that it's not fair that the "only way to recover costs" is to charge higher rents to new tenants.
31. Landlord Attorney Nancy Lervin said that no regulation will "save Prop. H from constitutional infirmity." She does not believe that an MNOI standard can be grafted on to an existing rent control ordinance, nor that Prop. H deals with fair return on added capital. She considers Prop. H to be an "administrative, regulatory and financial nightmare", even if it's facially constitutional.
32. Landlord David Crommie said that his tenants make 3 times what he makes, and that they'll never move. Mr. Crommie's "minimal capital improvement" is being "yanked out from under him." Mr. Crommie believes that there are greedy landlords, but there's also such a thing as a greedy tenant.

V. Vote on Whether to Go Into Closed Session Regarding the Case of Quigg v. Rent Board (Superior Court Case No. 316928) Pursuant to S.F. Administrative Code Section 67.11(a)

There was no public comment on whether the Board should go into Closed Session. The Board therefore voted as follows:

MSC: To go into Closed Session. (Justman/Gruber: 5-0)

VI. Closed Session re Quigg, supra, Pursuant to Government Code Section 54956.9(a)

The Board went into Closed Session from 7:06 to 8:07 p.m. with Deputy City Attorneys Marie Blits and Andrew Schwartz to discuss the case of Quigg v. Rent Board (Superior Court Case No. 316928).

VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Quigg, supra,

MSC: To disclose the Motion passed by the Board in Closed Session but for there to be no further disclose of conversations held in Closed Session.
(Gruber/Justman: 5-0)

VIII. Report on Any Actions Taken in Closed Session Regarding Quigg, supra, Pursuant to Government Code Section 54957.1(a)(2) and S.F. Administrative Code Section 67.14(b)(2)

President Wasserman reported that the Board consulted with counsel and passed the following motion:

MSC: To ask the City Attorney, with input from Rent Board staff, to draft comprehensive regulations to make Proposition H constitutional and workable with all deliberate speed. (Becker/Justman: 5-0)

President Wasserman informed the public that it will take approximately 2-3 weeks for regulations to be drafted. The Board will then review the regulations, make any changes they wish, and put the regulations out for Public Hearing. After they are adopted, the City Attorney will go back to Judge Robertson to ask that the Temporary Injunction be lifted and for a hearing on the merits of Prop. H.

IX. Communications

The Board received several communications pertaining to the implementation of Proposition H.

X. Old Business

Fair Return/Implementation of Prop. H

The Board briefly discussed the impact of the Board's continuing to process capital improvement petitions and issue decisions. Commissioner Becker said that tenants would like the issuance of decisions stayed because there are large passthroughs pending; Commissioner Murphy expressed concern that delay will expose tenants to liability for large retroactive amounts should Prop. H eventually be thrown out by the courts. Commissioner Gruber asked why the Board's hardship provisions aren't sufficient to deal with the problem of tenants who cannot afford to pay. Commissioner Becker reminded the Board that a tenant can only appeal a current passthrough, when the subsequent phase-in of accumulated amounts in excess of the initial 10% could lead to eventual displacement. Commissioner Murphy said that he would be willing to look at the possibility of allowing tenants to file hardship appeals in later years where the imposition of an accumulated passthrough, on top of the original 10%, creates a hardship. This offer was conditioned on the Rent Board continuing to process capital improvement petitions and "respect the Stay." Staff was asked to draft a regulation to this effect for discussion at the January 16th meeting.

XI. Calendar Items

January 16, 2001

11 appeal considerations (1 cont. from 12/5/00; 1 cont. from 1/2/01)

Old Business:

- A. Fair Return/Implementation of Prop. H
- B. Hardship Appeals of Accumulated C.I. Passthrough Amounts Upon Imposition at a Later Date

January 23, 2001 - NO MEETING

January 30, 2001

6 appeal considerations

Old Business: Fair Return/Implementation of Prop. H

XII. Adjournment

President Wasserman adjourned the meeting at 8:30 p.m.

City and County of San Francisco

Residential Rent Stabilization
and Arbitration Board



NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
January 16, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

25 Van Ness Avenue, #70, Lower Level

POLLY MARSHALL
VICE-PRESIDENT

AGENDA

DOCUMENTS DEPT.

JAN 12 2001

SAN FRANCISCO
PUBLIC LIBRARY

01-12-01 10:15 AM

LARRY BEACH BECKER
SHIRLEY A. BIERLY
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVED MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 555 O'Farrell #501

AT2K0195
(cont. from 12/5/00)

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 523 - 29th Ave.

AL2K0220
(cont. from 1/2/01)

The landlord appeals the decision granting a claim of unlawful rent increase.

C. 1075-A Fell St.

AL2K0222

The landlord appeals the decision granting a rent reduction due to the loss of garage space.

D. 797 Cole St.

AT2K0226

The tenant appeals the decision partially granting a claim of decreased housing services.

E. 3451 - 26th St.

AT2K0224

The tenants appeal the remand decision holding the landlords liable for rent overcharges only for the period of time they have owned the building.

F. 1082 Post St. #306

AT2K0223

The tenant appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

G. 1010 Bush #105

AT2K0230

The tenant appeals the denial of a petition alleging decreased housing services due to the revocation of overnight guest privileges.

H. 1487 Guerrero

AT2K0227

The tenant appeals the remand decision granting her claim of financial hardship only for ninety days in order for the tenant to obtain a roommate.

I. 932 Cabrillo #1

AT2K0228

The tenant appeals the decision denying her claim of decreased housing services.

J. 536 Mason #306

AL2K0231

The landlord appeals the decision granting claims of decreased housing services, claiming non-receipt of the notice of hearing.

K. 505 -- 26th Ave. #2

AL2K0229

The landlord appeals the decision granting a rent reduction due to the landlord's failure to consent to a new roommate.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Fair Return/Implementation of Prop. H

B. Hardship Appeals of Accumulated C.I. Passthrough Amounts
Upon Imposition at a Later Date

IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment

ACCESSIBLE MEETING POLICY

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



MINUTES OF THE REGULAR MEETING OF WILLIE L. BROWN, JR.
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD, MAYOR

SHARON K. WASSERMAN

PRESIDENT

JOSEPH GRUBB

EXECUTIVE DIRECTOR

Tuesday, January 16, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

POLLY MARSHALL

VICE-PRESIDENT

DOCUMENTS DEPT.

I. Call to Order

JAN 25 2001

LARRY BEACH BECKER President Wasserman called the meeting to order at 6:10 p.m.

SAN FRANCISCO
PUBLIC LIBRARY

SHIRLEY A. BIERLY

DAVID GUSTAV GRUBER

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

II. Roll Call

Commissioners Present:

Becker; Gruber; Hobson; Lightner; Marshall;
Wasserman.

Commissioners not Present:

Justman; Mosser; Murphy.

Staff Present:

Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of January 9, 2001 with the following corrections: to reflect that Robin Leavitt is a Mr. and not Ms.; and to specify that it was Commissioner Marshall who asked staff to draft a regulation allowing tenants to file hardship appeals upon the imposition of accumulated capital improvement passthroughs. (Becker/Gruber: 5-0)

IV. Remarks from the Public

The following individuals addressed the Commissioners concerning appeals on the calendar:

1. Jennifer Welsh of St. Peter's Housing Committee said that, because of their remand instructions in the cases concerning 3451 - 26th St. (AT2K0224) and 1487 Guerrero (AT2K0227), the Board appears to have "bowed to landlord interests." In the Guerrero Street case, Ms. Welsh feels that the hardship appeals process is a "farce" if a disabled widow is ineligible and forced to get a roommate. In the 26th Street case, by reducing the refund due to rent overpayments, Ms. Welsh said that the Board had granted the landlord a hardship appeal without making them fill out the forms. She submitted petitions with 175 signatures asking that the Board overturn the remand decisions.
2. Robert Rosenbaum, the landlord in the case concerning 1075-A Fell Street, told the Board that he was available to answer any questions they might have.
3. Tommy Avicolti Mecca of the Housing Rights Committee also said that the Guerrero and 26th Street decisions were unfair. He believes that tenants

shouldn't have to pay capital improvements because of Prop. H. He asked that the Board "do the right thing and rule in favor of the tenants.

4. Ada Cook, the landlord in the case at 932 Cabrillo #1 (AT2K0228), told the Board that the tenant had threatened to "create nuisances for the landlady only" and that the assertions by the tenant in her appeal were untrue.
5. Ignatius Degroot is a pastor of a parish in the Mission District. He said that 6 of his parishioners have been evicted recently, and that the poor are being driven out of San Francisco. He told the Board that the feeling amongst tenants in the Mission is that "an appeal won't do any good."
6. Daniel Quigg, the landlord in the Guerrero Street case, provided a summary of where the case now stands. Mr. Quigg said that he spent \$28,000 on capital improvements, including \$1,445 for a new heater that he did not assess to the tenant because she is a senior citizen.
7. Enrique Salinas, the tenant involved in the 26th Street case, said that he had clearly shown that the rent increase was illegal and that he had paid it for many years.
8. Dave Wasserman, attorney for the landlord in the 26th Street case, told the Board that his client wasn't a "greedy landlord", and that this building is her only asset. He said that his client accepts the rollback of the base rent, and that she'd purchased a building with "horrible records." He said that another equitable consideration should be the economic circumstances of the landlord.
9. Miguel Carrera from the Coalition on Homelessness demanded good decisions for "these and all people", especially in the Mission District. He told the Board that he'd had to move to the East Bay because he couldn't afford to pay rent in San Francisco, and that "low-income families are attacked every day."
10. Tenant Zoila Veliz demanded justice for these people.
11. Dave McGuire of Mission Agenda said that an income-to-rent ratio of 33% is a "rational number" and that in this "crazy, aberrant economy", people are having to choose between food, medicine and rent.
12. Matt Brown, former Director of St. Peter's Housing Committee, said that the tenant in the Guerrero Street case is exactly who the hardship provisions were designed to protect, and that the Board has no authority to make her get a roommate in order to remain in her home. Mr. Brown questioned why the Board was deviating from its prior policy of holding new owners liable for unlawful rent increases given by a prior owner, since it is harder for low-income tenants to file lawsuits than for landlords, and the Board was not obligated to follow the unpublished Larsen decision.
13. Lauren Porter of St. Peter's Housing Committee said that she tells tenants that it's not true that there are no laws to protect them, and asked what she is supposed to say when the Rent Board Commission doesn't "uphold the law." She said that it is their "duty, discretion and responsibility" to do so.

V. Consideration of Appeals

A. 555 O'Farrell #501

AT2K0195
(cont. from 12/5/00)

The landlord's petition for rent increases based on increased operating expenses and certification of capital improvement costs to the tenants in twenty units was granted, in part. The tenant appealed on the grounds of financial hardship. The appeal was continued from the December 5th meeting in order for the Deputy Director to draft a letter and obtain additional information regarding the tenant's interest income and available resources.

This appeal was withdrawn immediately prior to the meeting.

B. 523 – 29th Ave.

AL2K0220
(cont. from 1/2/01)

The tenant's petition alleging unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$4,254.12 due to a mis-calculation of allowable banking. On appeal, the landlord argues that: the rent increase in effect during the period 1992-1993 was confusing, due to the rate having changed; the tenant paid the increase without complaint for two years; the tenant had received no rent increase for seven years prior to the subject increase having been imposed; the improper increase was due to an arithmetic error; and the tenant has been given leeway when she was late in making rent payments.

After discussion at the meeting on January 2nd, it was the consensus of the Board to continue this case in order for staff to identify the nature of the landlord's mistake in calculating the allowable banking.

MSC: To deny the appeal. (Becker/Marshall: 3-2;
Gruber, Lightner dissenting)

C. 1075-A Fell St.

AL2K0222

The tenant's petition alleging decreased housing services due to loss of garage space and the right to park in the driveway was granted, and the landlord was found liable to the tenant in the amount of \$1,220.00. On appeal, the landlord claims that: use of the garage for storage was explicitly precluded at the inception of the tenancy, and this service was added later for no additional consideration; loss of on-street parking because of loss of the right to block the driveway does not constitute a housing service provided by the landlord; the garage is not an extension of the tenant's unit; and the tenant has been using this area as a work space without the landlord's knowledge and for no additional charge.

MSC: To deny the appeal. (Marshall/Becker: 4-1; Gruber dissenting)

D. 797 Cole St.

AT2K0226

The tenant's petition containing several allegations of decreased housing services was denied except that the landlord was found liable in the amount of \$68.75 due to a leaking rear porch area. On appeal, the tenant claims that the landlord failed to test the efficacy of the repairs that were made; that the amount of the rent reduction granted is inadequate, since replacement storage cannot be found for \$25.00 per

month; and that the Administrative Law Judge failed to take into account the potential danger of water leaking on an electrical switch.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

E. 3451 – 26th St.

AT2K0224

The tenants' petition alleging unlawful rent increases was granted, and the landlords were found liable to the tenants in the amount of \$10,481.28. The landlords' appeal was accepted and the case was remanded in the interests of fairness and justice to hold the landlords liable for overcharges only for the period of time they have owned the building. The Decision on Remand therefore holds the landlords liable for the reduced amount of \$3,543.64. The tenants appeal the remand decision, asserting that: since successor landlords inherit the right to banked increases and capital improvement passthroughs not imposed by the prior owner, they should also inherit liability for overcharges; there are more remedies available to the landlords for recovery of the disputed amounts than there are to the tenants; the Decision in this case could encourage landlords to raise rents unlawfully in order to increase the sale price of a building; current owners are held liable for security deposit amounts paid to a prior owner, whether or not the sums had been transferred to them; and the outcome in this case was determined by the amount of money owed, and not in accordance with existing law or policy.

MSC: To deny the appeal. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

F. 1082 Post St. #306

AT2K0223

The tenant's appeal was filed one day late because the tenant has been ill and immobilized.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Lightner: 5-0)

The landlord's petition for certification of seismic strengthening costs to 14 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

G. 1010 Bush #105

AT2K0230

The tenant's petition alleging decreased housing services because of the revocation of overnight guest privileges was denied because the Administrative Law Judge found that the right to have overnight guests was not included in the tenant's base rent at the commencement of the tenancy, nor did the tenant pay additional consideration for this service at a later date. The tenant appeals, claiming that her case was not given adequate consideration by the Administrative Law Judge; that she never signed a lease or rental agreement restricting visiting hours; and that the revocation of overnight privileges was in retaliation for her having filed a petition at the Rent Board.

After discussion, it was the consensus of the Board to continue consideration of this case in order for Commissioners Becker and Marshall to research the constitutional

question of whether the tenant's right to have overnight guests could be restricted; and for the Administrative Law Judge to address the issue of retaliation.

H. 1487 Guerrero

AT2K0227

The landlords' appeal of a remand decision deferring a capital improvement passthrough unless and until the tenant's financial circumstances should change was accepted and the case was remanded to the Administrative Law Judge to defer the passthrough for 90 days so that the tenant could obtain a roommate. The tenant is 67 years old, Spanish-speaking and hearing-impaired. On further appeal, she maintains that, because of her disability, she is afraid to invite a stranger to live with her.

MSC: To accept the appeal and remand the case for a hearing to examine the tenant's expressed language and hearing difficulties and determine whether she can safely obtain a roommate.
(Marshall/Becker: 4-1; Gruber dissenting)

I. 932 Cabrillo #1

AT2K0228

The tenant's petition alleging substantial decreases in housing services and the landlord's failure to repair was denied because the Administrative Law Judge found that the conditions were not substantial, did not constitute violations of State or local law and/or the tenant had failed to prove that notice had been provided to the landlord. On appeal, the tenant claims that: evidence was admitted that was illegally obtained by the landlord; the tenant's evidence was mis-labeled as having been submitted by the landlord; pertinent evidence was omitted; and the tenant was not given the opportunity to examine photographs submitted by the landlord.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

J. 536 Mason #306

AL2K0231

The tenant's petition alleging decreased housing services because of broken window blinds in her furnished apartment was granted, and the landlord was found liable to the tenant in the amount of \$87.50. The landlord had not appeared at the hearing. On appeal, the landlord claims not to have received notice of the hearing; that written notice was not provided by the tenant regarding the alleged problem with the blinds; and that the blinds were operable when checked and did not compromise the tenant's privacy.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Lightner: 5-0)

K. 505 – 26th Ave. #2

AL2K0229

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$3,682.83 due to unreasonable withholding of the tenant's right to have replacement roommates. On appeal, the landlord claims that there are many factual inaccuracies in the Decision.

MSC: To deny the appeal. (Becker/Lightner: 5-0)

VI. Communications

Pursuant to Commissioner Marshall's request of staff at the last meeting, the Board received a copy of proposed additions to Section 2.18 of the Rules and Regulations that would make it possible for tenants to appeal the imposition of an accumulated capital improvement passthrough on the grounds of financial hardship. This issue will be discussed at the Board meeting on January 30th or at the meeting on February 6th.

VII. Old Business

The Board's discussion of issues pertaining to the implementation of Proposition H, including fair return, will be continued in closed and public sessions at the Board meeting on February 6th.

IV. Remarks from the Public (cont.)

14. The tenant in the case at 932 Cabrillo (AT2K0228) told the Board that she would not have accepted her "last-minute" appeal either.
15. The landlord in the case at 536 Mason (AL2K0231) inquired as to the outcome of her appeal.

VIII. Calendar Items

January 23, 2001 - NO MEETING

January 30, 2001

7 appeal considerations

Old Business:

- A. Fair Return/Implementation of Prop. H
- B. Hardship Appeals of Accumulated Capital Improvement Passthroughs

February 6, 2001

4 appeal considerations (1 cont. from 7/1//00; 1 cont. from 1/16/01)

Closed Session: Quigg v. S.F. Rent Board

(Superior Court Case No. 316928)

Old Business:

- A. Fair Return/Implementation of Prop. H
- B. Hardship Appeals of Accumulated Capital Improvement Passthroughs

IX. Adjournment

President Wasserman adjourned the meeting at 7:40 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
January 30, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

JAN 25 2001

EX 1/23/01

SAN FRANCISCO
PUBLIC LIBRARY

POLLY MARSHALL
VICE-PRESIDENT

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

LARRY BEACH BECKER
SHIRLEY A. BIERLY
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 4220 Cesar Chavez, Apt. 101

AT2K0233

The tenant appeals the remand decision denying her claim of financial hardship.

B. 1135 Masonic #7

AT2K0244

The tenant appeals the denial of a claim of unlawful rent increase on the grounds that he is experiencing financial hardship.

C. 542 Mason St.

AT2K0234 thru -43

Ten tenants appeal the decision granting certification of capital improvement costs on the grounds of financial hardship.

D. 4220 Cesar Chavez #429

AT2K0232

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the properly noticed hearing.

E. 701 Pine #37

AT2K0245

The tenant appeals the denial of a claim of decreased housing services due to the loss of quiet enjoyment.

F. 801 Jones St. #308

AT010002

One tenant appeals the decision granting rent increases based on increased operating expenses and certifying capital improvement costs on the grounds of financial hardship.

G. 501 Taylor St. #201

AT010004

The tenant appeals the decision denying his petition alleging decreased housing services.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
 - Fair Return/Implementation of Prop. H
- IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- X. New Business
- XI. Calendar Items
- XII. Adjournment

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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, January 30, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

KHIN MAI AUNG

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

Vice-President Marshall called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present:

Becker; Gruber; Hobson; Lightner; Marshall;
Mosser.

Commissioners not Present:

Justman; Murphy; Wasserman.

Staff Present:

Grubb; Wolf.

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III. Approval of the Minutes

MSC: To approve the Minutes of January 16, 2001.
(Becker/Gruber: 4-0)

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IV. Remarks from the Public

1. Robert Pender informed the Board that the Parkmerced Residents' Organization (PRO) has been revived, and provided the Commissioners with a copy of their newsletter.
2. Peter Plonsky, the tenant in the case at 501 Taylor #201 (AT010004), told the Board that he has endured "sub-human conditions", and that it would have been better if he had moved to another unit in the building in 1998. Mr. Plonsky believes that there may be collusion between his landlord and the owners of the building next door.

V. Consideration of Appeals

A. 4220 Cesar Chavez, Apt. 101

AT2K0233

The landlord's petition for certification of capital improvement costs was granted. The tenant appealed; the appeal was accepted and remanded for a hearing on the tenant's claim of financial hardship. The Administrative Law Judge found that the tenant had demonstrated sufficient financial hardship to waive the retroactive amounts owed, but imposed the \$28.70 monthly passthrough effective January 1, 2001. The tenant appeals the remand decision, asserting that her net, rather than gross, income should be used in determining whether she qualifies for a hardship deferral; and that there are several factual errors in the remand decision.

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Becker/Gruber: 4-0)

MSC: To accept the appeal and defer imposition of the approved capital improvement passthrough until July 1, 2001, at which time it shall go into effect. (Marshall/Gruber: 3-1; Hobson dissenting)

B. 1135 Masonic #7

AT2K0244

The tenant's petition alleging an unlawful increase in rent from \$1,017.00 to \$2,100.00 was denied because the Administrative Law Judge found that the increase was justified pursuant to Costa-Hawkins. The tenant appealed on the grounds of financial hardship.

The day before the Board meeting, the tenant submitted additional arguments in support of his appeal, including allegations that he resided at the rental unit pursuant to an agreement with an agent of the landlord, and therefore was not a subtenant subject to a Costa-Hawkins rent increase. Since there was no evidence that this submission had been served on the landlord, the Commissioners continued consideration of this appeal in order for staff to serve the landlord and provide an opportunity to him to respond, should he desire to do so.

C. 542 Mason St.

AT2K0234 thru -43

The landlords' petition for certification of capital improvement costs to 19 of 34 units was granted, resulting in a monthly passthrough in the amount of \$15.43. The tenants in ten units appeal the Decision on the grounds of financial hardship.

MSC: To accept the appeals of the tenants in unit numbers 1, 20, 23, 50 and 55 and remand those cases for a hearing on the tenants' claims of financial hardship; to deny the appeals of the tenants in unit numbers 52, 53 and 54. (Lightner/Gruber: 4-0)

The appeals of the tenants in unit numbers 30 and 60 were continued in order for staff to obtain additional information.

D. 4220 Cesar Chavez #429

AT2K0232

The tenant's petition alleging substantially decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

Consideration of this appeal was continued in order for staff to contact the tenant and obtain additional information.

E. 701 Pine #37

AT2K0245

The tenant's petition alleging decreased housing services due to noise coming from the upstairs neighbors was denied because the Administrative Law Judge found that the tenant had failed to meet his burden of proof and that the landlord had acted reasonably in attempting to address the tenant's concerns. On appeal, the tenant claims that: the Decision is biased in favor of the landlord; a report obtained from a private investigator was completely ignored; there are mis-statements of fact in the

Decision; and the landlord has not acted to mitigate the noise, since he does not believe that there is a problem.

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Lightner/Gruber: 4-0)

MSC: To deny the appeal. (Gruber/Marshall: 3-0)

F. 801 Jones St. #308

AT010002

The landlord's petition for certification of capital improvement costs and rent increases based on increased operating expenses to 31 of 60 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 4-0)

G. 501 Taylor St. #201

AT010004

The tenant's petition alleging decreased housing services due to construction noise from neighboring buildings, a noisy upstairs neighbor, harassment and poor ventilation was denied because the Administrative Law Judge found that the conditions were not the landlord's responsibility or were within what is reasonably to be expected for apartment living. The tenant appeals, claiming that there are factual errors in the Decision; that the landlord does not care about the image of the building; and that he should have been granted a 50% reduction in rent for several months in the years 1999 and 2000.

MSC: To deny the appeal. (Lightner/Gruber: 4-0)

VI. Communications

The Commissioners received correspondence concerning cases on the calendar.

VII. Director's Report

Executive Director Grubb informed the Board that Khin Mai Aung will be sworn in as an Alternate to Commissioner Marshall on Friday, February 2nd, at 10¹⁵ a.m. in the Mayor's Office at City Hall.

VIII. Old Business

Fair Return/Implementation of Prop. H

This issue will be discussed at the February 6th meeting in conjunction with an Executive Session with Deputy City Attorneys Andrew Schwartz and Marie Blits concerning the case of Quigg v. Rent Board (Superior Court Case No. 316928).

IV. Remarks from the Public (cont.)

3. The tenant involved in the case at 701 Pine #37 (AT2K0245) informed the Board that he did not think his evidence had been considered and said that the Board's decision to deny his appeal was unfair.

4. Robert Pender introduced two other members of the Board of Directors of PRO.

IX. Calendar Items

February 6, 2001

4 appeal considerations (1 cont. from 7/1/00; 1 cont. from 1/16/01)
Closed Session re Quigg v. Rent Board (Superior Court Case No. 316928)
Old Business: Consideration of Draft Regulations Providing for
Implementation of Prop. H

February 13, 2001 - NO MEETING

X. Adjournment

President Wasserman adjourned the meeting at 7:30 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
February 6, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

City Hall, Room 408

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15-ay 2/5/01

POLLY MARSHALL
VICE-PRESIDENT

AGENDA

FEB - 6 2001

LARRY BEACH BECKER
SHIRLEY A. BIERLY
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Vote on Whether to Go Into Closed Session Regarding the Case of Quigg v. Rent Board (Superior Court Case No. 316928) (Pursuant to S.F. Administrative Code Section 67.11{a})
- V. Closed Session re Quigg, supra (Pursuant to Government Code Section 54956.9{a})
- VI. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Quigg, supra (Pursuant to S.F. Administrative Code Section 67.11{a})
- VII. Report on Any Actions Taken in Closed Session Regarding Quigg, supra (Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14{b}{2})
- VIII. Remarks from the Public

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NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- IX. Old Business

Consideration of Draft Proposed Amendments and Additions to Rules and Regulations Sections 1.13, 7.10, 7.12, 7.13 and 11.25, and New Sections 7.19 – 7.24, Providing for Implementation of Proposition H

- X. Consideration of Appeals

A. 161 & 165 Jordan Ave.

AL2K0099
(cont. from 7/1/00)

The landlord appeals the decision granting rent reductions due to decreased housing services.

B. 1010 Bush #105

AT2K0230
(cont. from 1/16/01)

The tenant appeals the denial of a petition alleging decreased housing services due to the revocation of overnight guest privileges.

C. 895 Sutter #402

AT010003

The tenant appeals the decision granting certification of capital improvement costs and rent increases based on increased operating expenses.

D. 2280 Jackson #3

AL010005

The landlord appeals the decision granting a claim of decreased housing services.

XI. Communications

XII. Director's Report

VIII. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

XIII. New Business

XIV. Calendar Items

XV. Adjournment

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MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, February 6, 2001 at 6:00 p.m. at
City Hall, Room 408

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

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I. Call to Order

President Wasserman called the meeting to order at 6:20 p.m.

II. Roll Call

Commissioners Present:

Aung; Becker; Gruber; Hobson; Justman;
Lightner; Marshall; Mosser; Murphy;
Wasserman.

Staff Present:

Gartzman; Lee; Wolf.

President Wasserman introduced new Commissioner Khin Mai Aung, who is the Tenant Alternate for Commissioner Marshall.

IV. Public Comment on Whether the Board Should Go Into Closed Session

Robert Pender of the Parkmerced Residents' Organization (PRO) objected to the meeting as having been improperly noticed. Carolyn Kahn, President of PRO, told the Board she had "spent an hour" trying to find the meeting, having gone to 25 Van Ness instead of City Hall. For this reason, Ms. Kahn believed that the Board should not conduct a Closed Session.

V. Vote on Whether to Go Into Closed Session Regarding the Case of Quigg v. Rent Board (Superior Court Case No. 316928) Pursuant to S.F. Administrative Code Section 67.11(a)

MSC: To go into Closed Session. (Gruber/Lightner: 5-0)

VI. Closed Session re Quigg, supra, Pursuant to Government Code Section 54956.9(a)

The Board went into Closed Session from 6:25 to 7:35 p.m. with Deputy City Attorneys Marie Blits and Andrew Schwartz to discuss the case of Quigg v. Rent Board (Superior Court Case No. 316928).

VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Quigg, supra.

MSC: To not disclose the content of conversations held in Closed Session. (Marshall/Lightner: 5-0)

VIII. Report on Any Actions Taken in Closed Session Regarding Quigg, supra. Pursuant to Government Code Section 54957.1(a)(2) and S.F. Administrative Code Section 67.14(b)(2)

President Wasserman reported that the Board held a Closed Session to discuss the Quigg case with its attorneys. No actions were taken.

IX. Remarks from the Public

1. Tom Ramm of the Small Property Owners' Group asked the effect of a net operating loss in the base year for purposes of a fair return analysis.

2. Mike Betts, an attorney representing landlord Chris Larsen in the Ellis case at 195-197 Randall (L2K1517), told the Board that the landlord Ellis the building in order to establish a non-profit shelter. Although the landlord stopped at step 7 of the 10 steps required to Ellis the building, Rent Board staff recorded a Notice of Constraints. Mr. Betts believes this to be a violation of the equal protection and due process clauses of the Constitution, and asked that the Board consider his "appeal", or he will file a Writ. Mr. Betts represented that the tenant had voluntarily vacated the unit.

3. Tenant Sandra Finnegan questioned the exception in the proposed Prop. H regulations for "seismic" work, which she believes should only apply to unreinforced masonry buildings. Ms. Finnegan told the Board that by broadening the definition of seismic work, they were "gutting Prop. H."

4. Landlord Karen Crommie said that she hoped the proposed regulations would be made more "user-friendly." Ms. Crommie asked the Board what would be done about the 9 months she waited for a Decision on her capital improvement passthrough petition, which resulted in her having been affected by the passage of Proposition H. She said that 40% of the CPI is the accrued interest she should receive on her retirement investment.

XI. Consideration of Appeals

A. 161 & 165 Jordan Ave.

AL2K0099
(cont. from 7/11/00)

The tenants in five of the 8 units in the building filed petitions alleging decreased housing services and unlawful rent increases, which claims were partially granted. Within 15 days after the Decision of the Administrative Law Judge was issued, the landlord's son wrote the Board a letter requesting an extension of the appeal deadline because of his father's having been bedridden due to ill health at that time. Two months later, the son reported that his father had been hospitalized, and requested that his father be allowed to file an untimely appeal at such time as he was released from the hospital. At the meeting on July 11, 2000, the Board passed a motion granting the landlord's request and allowing him 6 months, or until no later than January 11, 2001, to pursue his appeal. Nothing further had been received from the landlord until the calendaring of this continued appeal consideration, which was after the January 11th deadline. The landlord has since submitted arguments in support of his appeal, including the following contentions: that the landlord made a good faith effort to repair the boiler, and heat was always provided to the tenants; that the petitions were filed in retaliation for the landlord having taken away the unlawful use of the garage as a woodworking studio; that if the boiler had been providing insufficient

heat, there would have also been complaints regarding a lack of hot water; and that the radiators are leaking because the tenants are opening the valves.

MSC: To find good cause for the late filing of the appeal.
(Lightner/Marshall: 5-0)

MSC: To deny the appeal. (Marshall/Becker: 3-2; Gruber, Lightner dissenting)

B. 1010 Bush #105

AT2K0230
(cont. from 1/16/01)

The tenant's petition alleging decreased housing services because of the revocation of overnight guest privileges was denied because the Administrative Law Judge found that the right to have overnight guests was not included in the tenant's base rent at the commencement of the tenancy, nor did the tenant pay additional consideration for this service at a later date. The tenant appeals, claiming that her case was not given adequate consideration by the Administrative Law Judge; that she never signed a lease or rental agreement restricting visiting hours; and that the revocation of overnight privileges was in retaliation for her having filed a petition at the Rent Board.

At the meeting on January 16th, it was the consensus of the Board to continue consideration of this case in order for Commissioners Becker and Marshall to research the constitutional question of whether the tenant's right to have overnight guests could be restricted; and for the Administrative Law Judge to address the issue of retaliation. After a brief discussion, consideration of this case was again continued.

C. 895 Sutter #402

AT010003

The landlord's petition for rent increases based on increased operating expenses and certification of capital improvement costs for 16 of 33 units was granted, in part. One tenant appeals the Decision on the grounds that several of the improvements do not benefit him; that the electrical work was shoddily done and without permits; and that the landlord has failed to make necessary repairs to his unit.

MSC: To deny the appeal. (Lightner/Gruber: 4-1; Marshall dissenting)

D. 2280 Jackson St. #3

AL010005

The tenant's petition alleging decreased housing services due to loss of use of a storage unit was granted, and the landlord was found liable to the tenant in the amount of \$75.00 per month. On appeal, the agent for the landlord claims that: the lease for the unit requires that items cannot be left in the common areas of the building without the owner's written consent; the storage locker was provided to the resident manager for his own use, and he has allowed the tenant to store items there as a favor only; and the tenant has failed to provide required information regarding his fiancée, who has recently moved into the unit.

MSC: To accept the appeal and remand the case for a hearing. If the service is found not to be substantial and/or if it was not verifiably promised at the inception of the tenancy, no decrease in housing

services will be found to have occurred. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

XII. Old Business

Consideration of Draft Proposed Amendments and Additions to Rules and Regulations Sections 1.13, 7.10, 7.12, 7.13 and 11.25, and New Sections 7.19 – 7.24, Providing for Implementation of Proposition H

The Commissioners discussed proposed regulations drafted by the Office of the City Attorney to implement Proposition H. Commissioner Justman expressed his view that, while there will be opportunities for the landlord and tenant communities to suggest ways that these regulations could be "tweaked", they should be put out for Public Hearing will all due haste. To that end, the Board passed the following motion:

MSC: To put proposed amendments to the Rules and Regulations providing for implementation of Proposition H out for Public Hearing. (Becker/Marshall: 3-2; Gruber, Lightner dissenting)

The Commissioners agreed that the public would be given 3 minutes to speak; and that individuals could bequeath their time to organizations, in order for longer presentations to be given. The first Public Hearing will be held on Wednesday, February 21st, with a backup date of March 6th, should a second Public Hearing be necessary. A sufficiently large meeting room in City Hall will be procured for both dates, and a Press Release will be issued. The meeting on February 20th will be cancelled, and cases scheduled for that night will be re-scheduled.

XIII. Communications

The Commissioners received the following communications:

A. A letter from landlord Bill Quan asking that the Board promulgate regulations requiring that a Master Tenant pay their proportionate share of the total rent.

B. An article from the S.F. Daily Journal of February 6, 2001, about the court's decision in the case of Galland v. City of Clovis (2001 Daily Journal D.A.R. 1313), which held that cities cannot be held liable for damages if rents are improperly set too low.

C. A letter from landlord Burton Greenberg concerning Proposition H.

XIV. Director's Report

In the absence of Executive Director Grubb, Deputy Director Wolf informed the Board that proposed legislation by Supervisor Gonzales implementing a Temporary Moratorium on the Rent Board's processing of capital improvement petitions during the pendency of the Temporary Injunction on Proposition H will be heard before the Housing, Transportation and Land Use Committee of the Board of Supervisors on February 8th at 1:00 p.m.

X. Remarks from the Public (cont.)

5. Landlord David Crommie told the Board that the proposed regulations are "impossible to understand"; asked if the issue of retroactivity is addressed; and said that indexing at 40% is "bizarre."

6. Tenant Sandra Finnegan asked whether seismic work was included in the Quigg lawsuit, and stated her belief that the voters wanted unreinforced masonry buildings treated differently than other seismic work.

7. Small landlord Nancy Tucker said that the proposed regulations don't "look very good"; and asked if her annual salary as a telecommuter would be counted as gross income for purposes of a fair return petition.

8. Robert Pender of PRO said that he was going to write a letter to the Sunshine Task Force regarding what he believes to be the improper noticing of the meeting.

XV. Calendar Items

February 13 and 20, 2001 - NO MEETINGS

February 21, 2001

6:00 PUBLIC HEARING: Proposed Regulations to Implement Prop. H
Board of Supervisors' Main Chamber, City Hall

XVI. Adjournment

President Wasserman adjourned the meeting at 9:10 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Wednesday, 6:00 p.m.,

February 21, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

CITY HALL, BOARD OF SUPERVISORS' MAIN CHAMBER

AGENDA

- 21/01
- I. Call to Order
 - II. Roll Call
 - III. Approval of the Minutes
 - IV. Remarks from the Public
- KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

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V. PUBLIC HEARING

Proposed Amendments and Additions to Rules and Regulations
Sections 1.13, 7.10, 7.12, 7.13, 7.14 and 11.25, and New Sections
7.19 - 7.24, Providing for Implementation of Proposition H

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- IX. New Business
- X. Calendar Items
- XI. Adjournment

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**NOTICE OF PUBLIC HEARING**

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FEB - 9 2001

DATE: February 21, 2001**TIME:** 6:00 P.M.SAN FRANCISCO
PUBLIC LIBRARY**PLACE:** City Hall, Board of Supervisors' Main Chamber
1 Carlton B. Goodlett Place
SAN FRANCISCO, CALIFORNIA

The Rent Stabilization and Arbitration Board Commissioners are proposing amendments to Sections 1.13, 7.10, 7.12, 7.13, and 11.25 of the Rules and Regulations and proposing the addition of new Sections 7.19, 7.20, 7.21, 7.22, 7.23, 7.24 to the Rules and Regulations. The proposed amendments and additions are intended to implement November 2000 Proposition H. These amendments and additions will be effective only if the stay of implementation of Proposition H ordered on December 20, 2000 in Quigg vs. City and County of San Francisco, et al., Superior Court case number 316928, is no longer in effect.

Written comments may be submitted prior to the hearing. Persons wishing to respond should do so by noon Thursday February 15, 2001, to ensure that the Commissioners have time to consider submissions. 13 copies should be submitted to the Rent Board office. Oral testimony will also be taken on the 21st. Speakers will be limited to three minutes each.

The proposed language is attached.

jpg/pubhrg/2/21/01

1 PROPOSED AMENDMENTS TO RENT BOARD RULES AND REGULATIONS §1.13
2 PURSUANT TO NOVEMBER 2000 PROPOSITION H, TO BE EFFECTIVE ONLY IF THE
3 STAY OF IMPLEMENTATION OF PROPOSITION H ORDERED ON DECEMBER 20,
4 2000 IN QUIGG VS. CITY AND COUNTY OF SAN FRANCISCO, ET AL., SUPERIOR
5 COURT CASE NUMBER 316928, IS NO LONGER IN EFFECT.

6 Section 1.13 Capital Improvements
7 (Amended February 28, 1989)

8 Pursuant to November 2000 Proposition H, "Capital improvements" means those
9 improvements which materially add to the value of the property, and appreciably prolong its
10 useful life, ~~or adapt it to new uses, and which may be amortized over the useful life of the~~
11 ~~improvement of the building.~~ Capital improvements do not include normal routine maintenance
12 and repair. (For example, the patching of a roof is not a capital improvement while the partial or
13 complete replacement of the old roof is; repair of a foundation is considered a capital improvement
14 and not a repair.) Repairs which are incidental to a capital improvement project, or replacement
15 of an item normally considered a capital improvement, are also defined as capital improvements.
16 Capital improvements otherwise eligible are not eligible if the landlord charges a use fee such as
17 where the tenant must deposit coins to use a landlord-owned washer and dryer. Capital
18 improvements shall be classified as either (a) seismic retrofit work or (b) work that is not seismic
19 retrofit work ("non-seismic capital improvement work"). Capital improvements classified as
20 seismic retrofit work shall be treated differently than capital improvements classified as work that
21 is not seismic retrofit work, in accordance with Section 37.3(a)(3) of the Rent Ordinance.

22 (a) Seismic retrofit capital improvement work shall consist of work performed to
23 improve a property's resistance to seismic motions, whether or not performed in accordance with
24 Building Code Chapter 16 (formerly Chapters 14 and 15), including bolting, bracing, shearwalling
25 or other seismic strengthening work. A landlord may impose rent increases for seismic retrofit
26 capital improvement work without regard to a maintenance-of-net-operating-income fair return
27 analysis, provided such costs are certified pursuant to Rules and Regulations Sections 7.10
28 -7.17.

1 (b) All other capital improvement work, including but not limited to rehabilitation
2 and energy conservation measures, shall be considered non-seismic capital improvement work.
3 A landlord may impose rent increases for non-seismic capital improvement work only to the extent
4 necessary to provide a constitutionally required fair return on the property under the maintenance-
5 of-net-operating-income standard of fair return, provided such costs are certified pursuant to Rules
6 and Regulations Sections 7.10 -7.24. For purposes of certifying the costs of non-seismic capital
7 improvement work, the following definitions shall be used:

8 (1) **Net Operating Income.** Net Operating Income equals Gross
9 Income less Operating Expenses as defined below.

10 (2) **Gross Income.** Gross Income equals the following and includes,
11 but is not limited to, income from residential, commercial, vacant and owner-occupied units on the
12 property:

13 (i) Gross Rents, computed as gross rental income of all units
14 on the property, calculated as if there were 100% paid occupancy;

15 (ii) Minus uncollected rents due to vacancy or bad debts if the
16 vacancy or bad debt is beyond the landlord's control;

17 (iii) Plus income from laundry facilities, garage, parking, storage
18 and insurance proceeds;

19 (iv) Plus all other income or consideration received or receivable
20 for or in connection with the property.

21 (3) **Operating Expenses.**

22 (i) Operating expenses shall include the following expenses
23 for all units on the property, including but not limited to residential, commercial, vacant and owner-
24 occupied units:

25 (A) Real property taxes;

26 (B) License and registration fees required by law to the
27 extent the fees are not otherwise paid by tenants;

1 (C) Utility costs paid by the landlord, including gas,
2 electricity, water, sewer, cable, and refuse removal;

3 (D) Insurance expenses;

4 (E) Management expenses, including necessary and
5 reasonable advertising, accounting and other managerial expenses;

6 (F) Reasonable professional expenses, fees and
7 costs, which shall include attorney fees, legal fees and costs incurred in connection with good faith
8 attempts to determine or recover rents owing and good faith unlawful detainer actions not in
9 derogation of applicable law, to the extent those amounts are not recovered. If it is determined
10 that these expenses will not occur annually, the Administrative Law Judge may amortize those
11 expenses;

12 (G) Normal routine repair and maintenance expenses,
13 including repair of all standard services such as elevator, electrical and plumbing, and repair or
14 replacement of furnished appliances;

15 (H) The amortized cost of capital improvements with
16 interest, exclusive of uncompensated labor, calculated pursuant to Rules and Regulations
17 Sections 7.12, 7.14, and 7.15, whether or not the capital improvements were previously certified
18 by the Rent Board;

19 (I) Uncompensated labor pursuant to Rules and
20 Regulations Section 7.13. The landlord has the burden of proving that all uncompensated labor
21 was performed in connection with either administrative-management tasks, repair and
22 maintenance tasks, or capital improvement work; and

23 (J) Other reasonable expenses as determined by the
24 Board or the Administrative Law Judge.

25 (ii) Operating expenses shall not include:

26 (A) Avoidable and unnecessary expense increases
27 since the base year;

28 (B) Mortgage principle and interest;

1 (C) Any penalties, fees or interest assessed or awarded
2 for late payments or violation of this or any other law;

3 (D) Depreciation of the property; or

4 (E) Any expense for which the landlord has been
5 reimbursed by any security deposit, insurance settlement, judgment for damages, settlement, or
6 any other method.

7 (4) **Consumer Price Index.**

8 Consumer Price Index (CPI) is the CPI for all urban consumers for the San
9 Francisco-Oakland Metropolitan Areas (All Items), provided by the U.S. Department of Labor.

1 PROPOSED AMENDMENTS AND ADDITIONS TO RENT BOARD RULES AND
2 REGULATIONS PART 7 PURSUANT TO NOVEMBER 2000 PROPOSITION H,
3 AMENDING SECTIONS 7.10, 7.12 AND 7.13 AND ADDING NEW SECTIONS 7.19
4 THROUGH 7.24, TO BE EFFECTIVE ONLY IF THE STAY OF IMPLEMENTATION OF
5 PROPOSITION H ORDERED ON DECEMBER 20, 2000 IN QUIGG VS. CITY AND
6 COUNTY OF SAN FRANCISCO, ET AL., SUPERIOR COURT CASE NUMBER 316928,
7 IS NO LONGER IN EFFECT.

8
9 **PART 7** LANDLORD APPLICATIONS FOR CERTIFICATION OF CAPITAL
10 IMPROVEMENTS, REHABILITATION, AND/OR ENERGY
11 CONSERVATION WORK PURSUANT TO NOVEMBER 2000
12 PROPOSITION H.

13 **Section 7.10 Filing**

(Amended August 29, 1989 by correction May 1, 1990; June 18, 1991;
subsection (d) added on January 31, 1995; amended March 7, 1995;
repealed and adopted April 25, 1995; effective February 1, 1995)

14 (a) Those landlords who seek to pass through the cost of capital improvements,
15 rehabilitation and/or energy conservation work pursuant to the November 2000 Proposition H,
16 whether for seismic retrofit work or for non-seismic capital improvement work, must file an
17 application (petition) for certification on a forms prescribed by the Board. ~~and accompanied by~~
18 ~~the appropriate filing fee as set forth in Section 3.10(b) above.~~ On and after December 21,
19 2000, only the landlord who paid for seismic retrofit work may file a petition for certification of the
20 costs of the seismic retrofit work.

21 (b) Information to Accompany Landlord's Application

22 (1) The application for certification of seismic retrofit capital
23 improvement costs shall be accompanied by: (1) (i) copies of the application in sufficient number
24 to distribute to each of the tenants named in the application, plus one additional copy for the
25 estimator; (2) (ii) two copies of all claimed invoices, signed contracts, and cancelled checks
26 substantiating the costs for which the landlord has not been compensated by insurance
27 proceeds; (3) (iii) if claim is made for uncompensated labor, the application shall specify the work
28 performed and include a copy of a log of dates and times when on which the work was

1 performed; and (4) (iv) copies of proof of compliance with the Department Bureau of Building
2 Inspection for any work claimed for energy conservation measures or other work for which proof
3 of compliance is required by State or local law.

4 (2) The application for certification of non-seismic capital improvement
5 costs shall be accompanied by: (i) copies of the application in sufficient number to distribute to
6 each of the tenants named in the application, plus one additional copy for the estimator; (ii) two
7 copies of all claimed invoices, signed contracts, canceled checks, or other documents
8 substantiating the costs of all claimed Operating Expenses, including the costs of capital
9 improvements, in both the Base Year and the Current Year; (iii) if a claim is made for
10 uncompensated labor, the application shall include a copy of a log of dates and times when the
11 work was performed, and shall specify the administrative-management task, repair or
12 maintenance task, or capital improvement work performed, and, where applicable, specify the unit
13 for which the work was done; (iv) copies of proof of compliance with the Department of Building
14 Inspection for any work claimed for energy conservation measures or other work for which proof
15 of compliance is required by State or local law; and (v) two copies of documents substantiating
16 the Gross Income in both the Base Year and the Current Year.

17 (c) Time of Filing Application and Notice

18 The landlord must file an application before giving legal notice of a rent
19 increase. The notice shall be in conformance with the requirements set forth in Section 4.10 above
20 and shall further include the dollar amount requested based on the amortization of the work
21 performed. This increase shall be inoperative unless and until the application is approved by
22 the Administrative Law Judge. Any amounts approved by the Administrative Law Judge shall
23 relate back to the effective date of the legal notice, if given.

24 If the landlord sends a notice of rent increase based on capital
25 improvements without first filing an application for certification, the increase shall be null and void.
26 In order to be able to pass through these amounts, an application must first be filed and then a
27 new notice sent.
28

1 (d) Special Provision for Owners of Proposition I Affected Units

2 Landlords of Proposition I Affected Units may petition the Board to certify
3 the cost of capital improvements, rehabilitation and/or energy conservation work in accordance
4 with, and subject to, the rules and procedures set forth in Part 7 of these Rules and Regulations
5 and Section 37.7 of the Rent Ordinance. Events before the unit was subject to the Rent
6 Ordinance may be considered. Petitions for Proposition I Affected Units based upon capital
7 improvements that are pending as of, or filed within six months of, April 25, 1995 may, at the
8 request of the landlord, be treated as if filed on May 1, 1994; provided, however, that the actual
9 date of filing shall be used to determine the effective date of any rent increase pursuant to Section
10 7.10(c) above.

11 **Section 7.12 Allocation of Cost of Improvements or Work to Individual Units**
(Amended March 14, 1989; August 29, 1989; June 18, 1991; Subsection
12 (b) amended October 20, 1998)

13 (a) The cost of capital improvements, rehabilitation, and/or energy
14 conservation work for which the landlord has not been compensated by insurance proceeds shall
15 be allocated to each unit in the building. The method used for cost allocation shall be that which
16 most reasonably takes into account the extent to which each unit benefits from the improvements
17 or work. Methods which may be appropriate, depending on the circumstances, include allocation
18 based on the square footage in each unit, allocation based on the rent paid for each unit, and
19 equal division among all units. Where the improvements do not benefit all units, only those
20 benefited may be charged the additional rent. For example, if a new roof were installed, the rents
21 of all units in the building may be raised to cover the cost. But if, in addition, a new floor had been
22 installed in one unit, that unit would be charged its proportionate share of the roof cost plus the
23 cost of the new floor. Costs attributable to units where the rent cannot be raised (because of a
24 lease restriction, owner occupancy, or other reason) may not be allocated to the other units.
25 Costs attributable to routine repair and maintenance shall not be certified but shall be considered
26 part of the costs of operating and maintenance.
27
28

1 (b) Effect of Vacancy on Rent Increases Requested for Seismic Retrofit
2 Capital Improvements Work

3 If a unit becomes vacant and is rerented after completion of seismic retrofit
4 capital improvements, rehabilitation, and/or energy conservation work listed in an application for
5 certification, no additional rent will be allowed on the unit based on the improvements or work
6 since the landlord has the opportunity to bring the unit up to market rent at the time the unit is
7 rerented. This section also applies to those units rented during the construction period for the
8 project of which the work is a part, as stated in the permit(s), contract document(s), and/or as
9 shown by other relevant evidence, or rented within six months of the commencement of work for
10 which an application for certification is filed, provided that ownership has not changed in that
11 period.

12 (c) Amortization Periods

13 For petitions filed on or after December 21, 2000, costs for seismic retrofit
14 capital improvement work certified under Section 37.7 shall be amortized on a straight line basis
15 over a twenty-year period. For petitions filed before December 21, 2000, costs for seismic retrofit
16 capital improvement work certified under Section 37.7 shall be amortized on a straight line basis
17 over a ten-year period. Costs for non-seismic capital improvement work shall be amortized on a
18 straight line basis over a seven or ten-year period depending upon which category described
19 below most closely relates to the type of improvement or work and its estimated useful life.

20 SCHEDULE I - SEVEN YEAR AMORTIZATION

21 The following shall be amortized over a 7 year period: Appliances, such as new
22 stoves, disposals, refrigerators, washers, dryers and dishwashers; fixtures, such as garage door
23 openers, locks, light fixtures, water heaters and blankets, shower heads, time clocks and hot
24 water pumps; and other improvements, such as carpeting, linoleum, and exterior and interior
25 painting of common areas. If the appliance is a replacement for which the tenant has already had
26 the benefit, the cost will not be amortized as a capital improvement, but will be considered part of
27 operating and maintenance expenses.
28

1 Appliances may be amortized as capital improvements when (1) part of a
2 remodeled kitchen; (2) based upon an agreement between the tenant and landlord; and/or (3) it is
3 a new service or appliance the tenant did not previously have.

4 SCHEDULE II - TEN YEAR AMORTIZATION

5 Major improvements to the structure of the building such as: new foundation, new
6 floor structure, new ceiling or walls - new sheetrock, new plumbing (new fixtures, or piping,) weatherstripping, ceiling insulation, seals and caulking, new furnaces and heaters, new wiring,
7 new stairs, new roof structure, new roof cover, new window, fire escapes, central smoke
8 detection system, new wood or tile floor cover, new partitioning sprinkler, boiler replacement, air
9 conditioning-central system, exterior siding or stucco, elevators, and/or additions such as patios or
10 decks, central security system, new doors, new mail boxes, new kitchen cabinets, or sinks, shall
11 be amortized over ten years.

12 (d) For decisions issued after April 10, 2000, no rent increase for seismic retrofit
13 capital improvement work shall exceed 5% of the tenant's base rent in any twelve-month period.
14 For decisions issued on or before April 10, 2000, no increase for seismic retrofit capital
15 improvement work shall exceed 10% of the tenant's base rent in any twelve-month period.
16 ~~Except in extraordinary circumstances, to be determined by the Board on appeal, no increase~~
17 ~~under this subsection shall exceed, in a twelve-month period, ten (10%) of the tenant's base~~
18 ~~rent or \$30.00, whichever is greater.~~ A landlord may accumulate any certified increase which
19 exceeds this amount and impose the increase in subsequent years subject to the limitation herein.

20 **Section 7.13 Valuation of Uncompensated Labor**

21 Any uncompensated labor (i.e., labor performed for no remuneration of any kind)
22 certified for seismic retrofit capital improvement work or certified as an Operating Expense under
23 Section 1.13(b)(3)(i)(I) in connection with non-seismic capital improvement work performed on
24 capital improvements, rehabilitation, or energy conservation work shall be valued at prevailing
25 labor rates. The craft classification to be employed shall be that of laborer unless the
26 uncompensated worker is licensed in the particular craft or profession for which credit is being
27 claimed. The documentation for all uncompensated labor must include a copy of a log of dates and
28

1 times when the work was performed and, where applicable, shall specify the administrative-
2 management task, repair or maintenance task, or capital improvement work performed, and the unit
3 for which the work was done.

4 **[New] Section 7.19 Allowable Capital Improvement Rent Increases**

5 (a) The Administrative Law Judge shall determine after a hearing if the landlord
6 is entitled to a rent increase for capital improvements.

7 (b) For all decisions issued after April 10, 2000, a rent increase based on the
8 costs of seismic retrofit capital improvement work shall be approved only in accordance with
9 Section 1.13 and Sections 7.10-7.17.

10 (c) For all decisions issued after April 10, 2000, a rent increase based on costs
11 of non-seismic capital improvement work shall be approved only in accordance with Section 1.13
12 and Sections 7.10-7.24.

13 (d) For all decisions issued after April 10, 2000 and before the date that
14 November 2000 Proposition H goes into effect, the Administrative Law Judge shall issue a
15 revised decision after giving the landlord the opportunity at a hearing to present facts
16 demonstrating that all or a portion of the rent increases approved in the decision are allowable for
17 one or more of the following reasons:

18 (1) The rent increase includes costs for seismic retrofit work as defined in
19 Section 1.13(a);

20 (2) The rent increase includes costs for non-seismic capital improvement
21 work and is necessary to provide a constitutionally required fair return as set forth in Section
22 1.13(b); or

23 (3) The application of November 2000 Proposition H would unlawfully
24 impair a contract or deny a vested or other legal right.

25 **[New] Section 7.20 Determination of Base Year**

26 (a) Base Year. Base Year for purposes of this Part 7 shall mean the calendar
27 year before a property was subject to the Rent Ordinance, or an alternate base year as
28 provided in subsection (b) below.

1 (b) Alternate Base Year. If the income and/or expense data for the calendar
2 year before the property was subject to the Rent Ordinance is not available, or for other good
3 cause shown, the landlord may request an alternate base year. The landlord shall specify in the
4 application the alternate base year requested and the reasons why the Administrative Law
5 Judge should approve the alternate base year. The landlord shall bear the burden of proving
6 that the alternate base year requested is the earliest calendar year for which income and expense
7 data is reasonably available. It shall be rebuttably presumed that the earliest calendar year for
8 which income and expense data is reasonably available is 1996, which is the period of time for
9 retaining such data for the California State Franchise Tax Board as of December 21, 2000.

10 **[New] Section 7.21 Determination of the Current Year**

11 (a) Current Year for purposes of this Part 7 shall mean the most recent
12 calendar year prior to the filing of the petition.

13 (b) For all petitions for rent increases based on costs for non-seismic capital
14 improvement work filed through December 31, 2001, the Current Year shall be calendar year
15 2000. Thereafter, petitions must be filed within six (6) months of the end of any designated
16 Current Year.

17 **[New] Section 7.22 Determination of Net Operating Income**

18 To determine the Net Operating Income during the Base Year, the actual
19 Operating Expenses for the Base Year shall be deducted from the Gross Income for the base
20 year. To determine the Net Operating Income during the Current Year, the actual Operating
21 Expenses for the current year shall be deducted from the Gross Income for the Current Year.

22 **[New] Section 7.23 Determination of Indexed Net Operating Income**

23 To determine the Indexed Net Operating Income, the landlord's Base Year Net
24 Operating Income shall be increased at the rate of forty percent (40%) of the increase in the
25 Consumer Price Index (CPI) from the Base Year to the Current Year. Forty percent (40%) of the
26 increase in the CPI shall be calculated by subtracting the CPI figure for December 31 of the Base
27 Year from the CPI figure for December 31 of the Current Year, dividing the result by the base year
28 CPI figure, and then multiplying the result by .40. That figure shall be multiplied by the Base Year

CPI figure, and then multiplying the result by .40. That figure shall be multiplied by the Base Year Net Operating Income, and that amount shall then be added to the Base Year Net Operating Income to determine the Indexed Base Year Net Operating Income. For example, if the Base Year Net Operating Income for a four-unit building in 1978 is \$10,000, the Base Year CPI for December 1978 is 65.3, and the Current Year CPI for December 2000 is 184.1, then the Indexed Base Year Net Operating Income would be \$17,277.18 calculated as follows:

$$(((184.1 - 65.3) \div 65.3) \times .40 \times \$10,000) + \$10,000 = \$17,277.18$$

[New] Section 7.24 Determination of Allowable Rent Increases for Non-Seismic Capital Improvement Work

If the landlord's Current Year Net Operating Income equals or exceeds the Indexed Base Year Net Operating Income, no rent increase based on the costs of the non-seismic capital improvement work shall be approved. If the landlord's Current Year Net Operating Income is less than the Indexed Base Year Net Operating Income, the landlord is entitled to rent increases for the costs of the non-seismic capital improvement work in the amount necessary to maintain the Indexed Base Year Net Operating Income. Where the amount necessary to maintain the Indexed Base Year Net Operating Income is less than the total amount of the amortized costs of non-seismic capital improvement work, the allowable costs shall be approved and passed through to the tenants in the following order:

(a) unit-specific capital improvement costs with an amortization period of 7 years;

(b) unit-specific capital improvement costs with an amortization period of 10 years;

(c) capital improvements with an amortization period of 7 years which benefit more than one unit;

(d) capital improvements with an amortization period of 10 years which benefit more than one unit;

(e) capital improvements with an amortization period of 7 years which benefit all units; and

(f) capital improvements with an amortization period of 10 years which benefit

all units.

1 PROPOSED AMENDMENTS TO RENT BOARD RULES AND REGULATIONS §11.25
2 PURSUANT TO NOVEMBER 2000 PROPOSITION H, TO BE EFFECTIVE ONLY IF THE
3 STAY OF IMPLEMENTATION OF PROPOSITION H ORDERED ON DECEMBER 20,
4 2000 IN QUIGG VS. CITY AND COUNTY OF SAN FRANCISCO, ET AL., SUPERIOR
5 COURT CASE NUMBER 316928, IS NO LONGER IN EFFECT.

6 **Section 11.25 Expedited Hearings**

7 (Added by Ordinance No. 133-92, effective June 20, 1992)

8 (a) Applicability. In the following cases, a tenant or landlord may obtain an
9 expedited hearing and order:

10 (1) Any landlord capital improvement petition for seismic retrofit work
11 where the proposed increase for ~~certified capital improvement costs~~ does not exceed 5% the
12 ~~greater of 10% or \$30.00~~ of a tenant's base rent and the parties file a signed stipulation setting
13 forth the cost of the seismic retrofit work ~~capital improvements~~ on a form provided by the Rent
14 Board;

15 (2) Any tenant petition alleging decreased housing services with a past
16 value not exceeding \$1,000.00 as of the date the petition is filed;

17 (3) Any tenant petition alleging the landlord's failure to repair and maintain
18 the premises as required by state and local law, provided that the tenant attaches to the petition
19 documentary evidence showing that the unrepaired/unmaintained conditions constitute violations
20 of applicable health or safety codes;

21 (4) Any tenant petition alleging unlawful rent increases where the parties
22 file a signed stipulation setting forth the tenant's rent history on a form provided by the Rent
23 Board and the rent overpayments do not exceed a total of \$1,000.00 as of the date the petition
24 is filed;

25 (5) Any tenant or landlord petition concerning only jurisdictional questions
26 where the parties file a signed stipulation setting forth the relevant facts.

27 (b) Application for Expedited Hearing and Order. In order to obtain an expedited
28 hearing and order, the petitioner must file an application for an expedited hearing and order,

1 including the written consent of all parties, on a form provided by the Rent Board. The
2 application, and the applicable stipulations and documentary evidence required in subsection (a)
3 above, must be filed at the time of filing the petition in order to obtain an expedited hearing date
4 within twenty-one (21) calendar days of the filing of the application. Within seven (7) calendar
5 days of the simultaneous filing of the application, stipulations and petition, a staff member shall
6 determine whether an expedited hearing is appropriate under subsection (a) above.

7 (1) If an expedited hearing is found to be appropriate, an expedited
8 hearing shall be scheduled within twenty-one (21) calendar days of the filing of the application
9 for an expedited hearing and order. Written notice of the expedited hearing date shall be mailed
10 to all parties at least ten (10) calendar days prior to the date of the expedited hearing. A
11 declaration under penalty of perjury stating the date and place of the mailing of such notice and
12 stating to whom and at what addresses the notice was sent shall be retained in the file of each
13 case. The notice shall state the date, time and place of the hearing and generally describe what
14 will take place, who has the burden of proof and the types of evidence likely to be useful at the
15 hearing.

16 (A) Postponement of Expedited Hearing. Requests for
17 postponement of an expedited hearing date shall be governed by Section 11.13
18 (Postponements) above. If an expedited hearing is postponed, it will be rescheduled at the
19 earliest available date which may not be within twenty-one (21) calendar days of the filing of the
20 application.

21 (2) If an expedited hearing is not appropriate under subsection (a) above,
22 written notice of rejection of the application shall be mailed to the parties within a reasonable time
23 following the filing of the application and a hearing on the petition shall be scheduled within forty-
24 five (45) calendar days of the filing of the petition. Written notice of the hearing shall be mailed to
25 the parties in accordance with Sections 11.10 (Time of Hearing: Consolidation) and 11.11 (Notice
26 of Hearing: Response) above. The hearing shall be conducted in accordance with Ordinance
27 Sections 37.7(g) (Certification Hearings) or 37.8(e) (Hearings).
28

1 (c) Late Application for Expedited Hearing and Order. If any portion of the
2 application, written consent of all parties, required stipulations or documentary evidence
3 necessary for obtaining an expedited hearing and order are filed at any time after the petition is
4 filed, a hearing on the petition shall be scheduled within forty-five (45) calendar days of the filing
5 of the petition. Prior to commencement of the hearing, the Administrative Law Judge shall
6 determine if an expedited hearing and order are appropriate under subsection (a) above. Where
7 an expedited hearing and order are appropriate, the Administrative Law Judge shall conduct the
8 hearing in accordance with the expedited hearing procedures set forth in subsections (e) and (f)
9 below, provided that all parties sign a written waiver of the right to receive an expedited hearing
10 date within twenty-one (21) calendar days of the filing of the application.

11 (d) Application for Expedited Hearing and Order at the Hearing. Even if no
12 application for an expedited hearing and order is filed prior to commencement of the hearing, the
13 Administrative Law Judge may determine that an expedited hearing and order are appropriate
14 under subsection (a) above and offer the parties an opportunity to file an application at the
15 hearing and as long as the record in the case remains open. The Administrative Law Judge must
16 fully inform the parties of their rights under the Ordinance before accepting the application.

17 (e) Conduct of Expedited Hearing. Expedited hearings shall be conducted in
18 accordance with Sections 11.17 (Conduct of Hearing) and 11.22 (Personal Appearances and
19 Representation by Agent) above. Burden of proof requirements set forth in Section 11.18
20 (Burden of Proof) above are applicable. All parties are entitled to legal representation or the
21 assistance of an interpreter at any stage of the proceeding. No record of the hearing shall be
22 maintained for any purpose.

23 (f) Order of the Administrative Law Judge. The Administrative Law Judge shall
24 issue a written order deciding the petition no later than ten (10) calendar days after the hearing.
25 The Administrative Law Judge shall make no written findings of fact. The Administrative Law
26 Judge shall order payment or refund of amounts owing to a party or parties, if amounts are
27 owed, within a period of time not to exceed forty-five (45) calendar days of the mailing of the
28

1 order. If amounts owed are not paid or refunded within forty-five (45) calendar days, the
2 Administrative Law Judge may order the amount(s) added to or offset against future rents.

3 (1) For expedited hearings conducted pursuant to subsection (a)(1)
4 above in which the petitioner prevails, the Administrative Law Judge's written order shall contain
5 the date upon which a capital improvement passthrough shall become effective, the monthly
6 passthrough amount per unit and the applicable amortization period(s).

7 (2) For expedited hearings conducted pursuant to subsection (a)(2)
8 above in which the petitioner prevails, the Administrative Law Judge's written order shall contain
9 the nature of each substantially decreased housing service, the value of the decrease and the
10 total amount of the past rent reduction corresponding with the decreased housing service(s).
11 The order will also include the amount of any prospective rent reduction for a continuing
12 decreased housing service. The order shall state under what conditions the landlord may be
13 able to restore the rent reductions.

14 (3) For expedited hearings conducted pursuant to subsection (a)(3)
15 above in which the petitioner prevails, the Administrative Law Judge's written order shall contain
16 the date and amount of the deferred rent increase, a specific enumeration of the necessary
17 repairs and/or maintenance and the amount to which the rent can be increased when those
18 repairs and/or maintenance are completed.

19 (4) For expedited hearings conducted pursuant to subsection (a)(4)
20 above in which the petitioner prevails, the Administrative Law Judge's written order shall contain
21 the dates of each relevant rent increase, the amount of rent actually paid by the tenant, the
22 lawful amount of rent owed by the tenant and the amount of rent overpayments.

23 (5) For expedited hearings conducted pursuant to subsection (a)(5)
24 above, the Administrative Law Judge's written order shall state whether the subject rental unit(s)
25 is/are subject to the jurisdiction of the Rent Board.

26 (g) Stay of Administrative Law Judge's Order. The Administrative Law Judge's
27 written order shall be stayed for fifteen (15) calendar days from the date of mailing the order.
28

1 (h) Objection to Administrative Law Judge's Order. Any objection to the
2 Administrative Law Judge's order must be received by the Rent Board within fifteen (15)
3 calendar days of the mailing of the order unless such time limit is extended for good cause by a
4 staff member. "Good cause" shall include, but is not limited to, the following: verified illness or
5 death of a party which prevented the filing of a timely objection; verified absence from the
6 party's mailing address during the fifteen (15) calendar days following the mailing of the order;
7 any other reason which made it impractical to file a timely objection. Mere inconvenience or
8 difficulty in filing the objection shall not constitute "good cause." The objection to the
9 Administrative Law Judge's order shall be filed on a form provided by the Rent Board. The form
10 shall state the basis of the objection, and shall be accompanied by sufficient copies to distribute
11 to each party, along with one set of business-sized envelopes (with no return address)
12 addressed to each party, with first class postage affixed to each envelope.

13 (1) Effect of Timely Objection. The timely filing of an objection will
14 automatically dissolve the Administrative Law Judge's order. The petitioning party may refile the
15 petition for hearing under any other appropriate hearing procedure set forth in the Ordinance. To
16 the greatest extent possible, the new case will be assigned for hearing to the same
17 Administrative Law Judge who issued the dissolved order.

18 (2) Finality of Administrative Law Judge's Order. If no timely objection to
19 the Administrative Law Judge's order is made, the order becomes final. The order is not subject
20 to appeal to the Board under Ordinance Section 37.8(f) nor is it subject to judicial review
21 pursuant to Ordinance Section 37.8(f)(9).

22 (i) Consolidation. To the greatest extent possible, and only with the consent of
23 all parties, expedited hearings with respect to a given building shall be consolidated.
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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

21/01
SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Wednesday, February 21, 2001 at 6:00 p.m. at
City Hall, Board of Supervisors' Main Chamber

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MAR - 7 2001

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PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Justman;
Lightner; Marshall; Mosser; Wasserman.
Staff Present: Lee; Wolf.

Commissioner Murphy appeared on the record at 6:23 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 30th and February 6, 2001.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

V. Public Hearing

Proposed Amendments and Additions to Rules and Regulations
Sections 1.13, 7.10, 7.12, 7.13, 7.14 and 11.25, and New Sections 7.19
- 7.24, Providing for Implementation of Proposition H

The Public Hearing commenced at 6:08 p.m. and concluded at 7:25 p.m. 34
individuals addressed the Board as follows:

1. Brook Turner from the Coalition for Better Housing said that his organization
opposes the Rules because they believe that Prop. H is unconstitutional, and
regulations cannot make it constitutional. Mr. Turner believes that "after the courts
have their final say", representatives from the landlord and tenant communities
should work out a reasonable compromise.

2. Robert Pender from the Parkmerced Residents' Organization (PRO) gave a
short history of that organization and urged the Board to pass rules and regulations to
enforce Proposition H.

3. Tenant George Buffington commended the Board on the proposed Rules
and urged them to "prevent passthroughs."

4. Tenant Edward Evans urged the Board to implement Prop. H because seniors and working class individuals are being affected by passthroughs, and one will "have to be a millionaire" to live in San Francisco pretty soon.

5. Tenant Alma Morris from Lombard Place expressed outraged that her landlords are considering litigation after what the tenants have been through. Ms. Morris' position was that: "We changed the law, now implement it."

6. Small landlord Inge Weidman expressed her opinion that Prop. H is not constitutional. She said that someone could put an Initiative on the ballot to rescind PG&E rates and that such an Initiative would pass, but it wouldn't be legal.

7. Landlord Carlton Johnson is a retired teacher and pensioner who only has one rental unit which needs repairs due to leaks. Mr. Johnson told the Board that he is not unique.

8. Landlord Gary Briggs predicted that Prop. H will be the "bane of the housing stock." He said that owners won't be able to make necessary repairs if everyone doesn't pay their fair share. He believes that many tenants will be evicted due to retroactive amounts owed should Prop. H be thrown out by the courts.

9. Small landlord Andrew Long stated his opinion that the fair return formula in the proposed regulations is a "joke" that will have "real world consequences." Mr. Long said that he was going to replace a brick foundation in his building, but there was now no reason for him to make improvements.

10. Robert Haaland of the Housing Rights Committee requested that the Commissioners instruct staff to stop processing capital improvement petitions, since the Judge gave the Board the discretion to do so. Mr. Haaland said that, since the voters passed Prop. H and the Board of Supervisors passed a Moratorium on the Rent Board's processing of petitions, it is time to stop.

11. Carolyn Cahn, President of PRO, said that constitutionality shouldn't be a concern when 57% of the voters passed the Proposition. She expressed concerns about having to commute should she have to move.

12. Landlord Burton Greenberg said that a means test should be applied to rent control coverage: that those who can afford to pay should absorb some of the costs, and that there should be hardship relief for those who can't. Mr. Greenberg said he had a negative cash flow for 6-8 years. He filed a capital improvement petition in October of 1999 but didn't receive a decision until July of 2000, so he is affected by Prop. H and feels he should be repaid.

13. Nancy Tucker of the Small Property Owners of San Francisco used her and Karen and David Crommie's time to make the following points and ask the following questions, among others: since debt service is accepted as a legitimate business expense by the IRS, why should it be excluded?; it is in the City's best interest to keep small landlords in business, or units will be lost; causing property values to go down constitutes a "taking"; owners of small buildings are being penalized over owners of condominiums and single family dwellings; how does one calculate the value of owner-occupied and vacant units?; what if there is a loss in the landlord's base year?; senior and disabled landlords living on Social Security won't be able to maintain their properties, which will contribute to the deterioration of the housing stock; and "over-regulation" is driving small landlords out of business.

14. Samuel Peacock said to implement Prop. H, since it is a "lifeline" for seniors.

15. Small landlord Marian Halley said that this crisis was caused by large corporations, and that soon one will have to be a large corporation in order to be able to afford to own property. She said that small buildings don't have much turnover so the landlords' income doesn't go up.

16. Tenant Lorraine Calcagni of Lombard Place Apts. said that it is a "nightmare" to live through a passthrough; that the tenants in her building experienced horrendous conditions; the landlord is making "exorbitant" profits; and that the tenants' rights were denied at their hearings before the Rent Board's Administrative Law Judge.

17. Tenant Alan Geller expressed his view that it is "well-intentioned" to improve property, but not to pass on years of neglect. He said that the tenants of Lombard Place should be covered by any regulations to implement Prop. H.

18. Tenant Chieko Yushida of Lombard Place is retired and has lived in the building for more than 20 years. Ms. Yushida said that she is "too old to move" and asked that the Board implement Prop. H.

19. Tenant Ernestine Weiss blamed past administrations for not building units, so the demand for housing has grown faster than the supply. Ms. Weiss said that landlords are making "unconscionable profits"; complained about hotelization; and said that "ignoring the will of the people equals an obstruction of justice."

20. Carolyn Blair of the Housing Rights Committee said "if the laws were fair, we wouldn't have Prop. H." She said that the landlords should open their books and, if they weren't receiving a fair return, it would be obvious. Since a hardship appeal is "hard to go through", Ms. Blair asked that the Board stop processing petitions.

21. Ted Gullickson of the Tenants' Union said that the proposed regulations are not perfect, but they seem fair, and were drafted by the person who has to defend the lawsuit against Proposition H. Since the Supervisors have passed a Moratorium, Mr. Gullickson said it is "ludicrous" for the Rent Board to continue processing petitions, and that this should be stopped immediately.

22. Garfield Powell, co-Vice President of PRO, said he was speaking for those who couldn't be at the Public Hearing. Mr. Powell said that between annual increases, PG&E passthroughs, and 7% O&M increases, tenants at Parkmerced are faced with almost 10% increases. Mr. Powell maintained that services at Parkmerced have gone down since the Carmel Corporation took over.

23. Shirley Bierly of the Senior Action Network said that it was crucial for the Board to pass Rules and implement Prop. H immediately.

24. Tenant Michael Barrett said that landlords get a 100% annual write-off on their taxes, and don't need passthroughs. Mr. Barrett believes that capital improvements must be major, for example, adding an elevator. He said that "doghouses" are worth \$1,000,000 in San Francisco, and complained about abuses of the Ellis Act.

25. Landlord Bill Quan said there is something wrong when examples run by staff show that landlords would not get rent increases based on lack of a fair return. Mr. Quan thinks that proposed amendments to the Regulations are an "improvement". He thinks that any regulations shouldn't be "set in stone" and that flexibility is required.

26. Tenant Keltie Morris of Lombard Place said that she lived with extreme mildew for many years, while the landlord refused to effectuate repairs. She believes that window replacement constitutes a repair, rather than a capital improvement.

27. Tenant Arnold Cohn said that Judge Robertson said that Prop. H was constitutional. Mr. Cohn believes that tenants shouldn't have to pay for deferred maintenance, and that the reduced purchase price of the building should compensate new owners for capital improvements they have to make. Mr. Cohn said that small owners aren't the problem, but that "nobody's making them hold on to their properties." Mr. Cohn suggested that any tenant worried about their landlord's income could make a tax-deductible gift of up to \$10,000.00.

28. Small landlord Will Sprietsma said that he couldn't afford to get a loan to fix the leaks in his building, and can't access the equity in his property because the units are rented at below market rents. Mr. Sprietsma thanked the tenant community because he has realized that it would be cheaper to buy a building in the South of France and move.

29. Jim Casio informed the Board that he purchased a TIC. His old landlord had fixed up the building, and Mr. Casio said that he was glad to pay the passthrough because he was raised not to "get something for nothing." Mr. Casio believes that San Francisco is about to become a "49 by 49 foot slum."

30. Small landlord Peter Holden said that his 4-unit building is currently worth \$300,000 but, if he Ellised it, it would be worth \$800,000. He asked that the Regulations provide a fair rate of return, including mortgage, interest and legitimate business expenses. He also said that Prop. H didn't address landlord hardship, and it could have.

31. Tenant Rennie O'Brian said that if improvements to a landlord's property can be passed on to tenants, landlords should have to share any capital gains with their tenants when they sell the property.

32. Tenant Ann Doherty of Marina Cove said that the Board should stop processing capital improvement petitions, and instead schedule the petitions filed by the tenants at that property. She believes that small landlords should be treated differently.

33. Janan New, Director of the S.F. Apartment Association, said that the Board couldn't re-work Prop. H to make it constitutional. Ms. New believes that most landlords won't get a cent under the proposed regulations, especially small landlords. Ms. New believes that this will lead to the degradation of neighborhoods and raise "life-safety issues"; and remarked that Supervisor Daly has introduced TIC legislation when Proposition N was defeated by the voters.

34. Tenant Angelique Duvall said that the Rent Board hasn't enough authority to do its job of protecting average income tenants because it can't award damages, nor make landlords make repairs.

After the conclusion of the Public Hearing, the Commissioners questioned Deputy City Attorney Marie Blits as to additional proposed amendments they had received that were not noticed as part of the Public Hearing. Ms. Blits explained that proposed changes to existing Section 7.14 added a 20-year imputed interest rate for seismic retrofit work; and further changes to proposed new Section 7.22 added a procedure in determining Net Operating Income for adjusting base year income expenses if they were unusually high or unusually low. These proposals will be put out for Public Hearing on March 6th.

Since the additional amendments required further Public Hearing, Commissioner Becker called for a Moratorium on the processing of capital improvement petitions. Commissioner Hobson also said that the Rent Board should stop processing petitions immediately, and further called for amendments to the rent law constraining large corporations while providing assistance to small landlords. Deputy City Attorney Blits informed the Board that they could not consider a Moratorium at this evening's meeting, since it was not on the Agenda. Commissioner Becker therefore asked that discussion of a Moratorium be calendared for the meeting on March 6th.

The Commissioners then went over the proposed amendments and additions to the Rules and Regulations that were the subject of this evening's Public Hearing, and requested certain changes in the language. In addition, the Board passed the following motion:

MSC: To put proposed changes to existing Rules Section 7.14, and further changes to proposed new Section 7.22, out for Public Hearing on March 6th. (Becker/Marshall: 5-0)

VI. Communications

The Commissioners received the office workload statistics for the month of December and a new Commissioners' Roster.

VII. Calendar Items

February 27, 2001 - NO MEETING

March 6, 2001

6 appeal considerations (3 cont. from 1/30/01; 1 cont. from 2/6/01)
Continued Public Hearing Regarding Proposed Regulations to Implement Proposition H

VIII. Adjournment

President Wasserman adjourned the meeting at 9:35 p.m.

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,
March 6, 2001

25 Van Ness Ave., #70, Lower Level

DOCUMENTS DEPT.

AGENDA

MAR - 7 2001

For 1st Post
3/5/01

SAN FRANCISCO
PUBLIC LIBRARY

SHARON K. WASSERMAN
PRESIDENT
6/01
POLLY MARSHALL
VICE-PRESIDENT

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Public Comment on Whether to Go Into Closed Session Regarding the Case of Quigg v. Rent Board (Superior Court Case No. 316928)
- V. Vote on Whether to Go Into Closed Session Regarding the Case of Quigg v. Rent Board (Superior Court Case No. 316928) (Pursuant to S.F. Administrative Code Section 67.11{a})
- VI. Closed Session re Quigg, supra (Pursuant to Government Code Section 54956.9{a})
- VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Quigg, supra (Pursuant to S.F. Administrative Code Section 67.11{a})
- VIII. Report on Any Actions Taken in Closed Session Regarding Quigg, supra (Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14{b}{2})
- IX. **Public Hearing**

7:00 Continued Consideration of Proposed Amendments to Rules and Regulations Sections 1.13, 7.10, 7.12, 7.13 and 11.25; Proposed new Sections 7.19, 7.20, 7.21, 7.22, 7.23 and 7.24; Proposed Changes to Existing Section 7.14; and Further Changes to Proposed New Section 7.22.
- X. Old Business

Fair Return/Implementation of Prop. H, Including Possible Implementation of a Moratorium on the Processing of Capital Improvement Petitions, Except for Seismic Work
- XI. Consideration of Appeals

A. 1135 Masonic Ave. #7

AT2K0244
(cont. from 1/30/01)

The tenant appeals the decision denying a claim of unlawful rent increase pursuant to Costa-Hawkins.

B. 4220 Cesar Chavez #429

AT2K0232
(cont. from 1/30/01)

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing.

C. 542 Mason #30 & 60

AT2K0237 & -43
(cont. from 1/30/01)

Two tenants appeal the decision certifying capital improvement costs on the grounds of financial hardship.

D. 1010 Bush St. #105

AT2K0230
(cont. from 2/6/01)

The tenant appeals the denial of her petition alleging decreased housing services due to the revocation of overnight guest privileges.

E. 1819 Golden Gate Ave. #12

AT010006

The tenant appeals the decision denying his claims of decreased housing services.

F. 2330 Larkin #32

AT010007

The tenant appeals the decision granting rent increases due to increased operating expenses on the grounds of financial hardship.

- XII. Communications
- XIII. Director's Report
- XIV. Remarks from the Public

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- XV. New Business
- XVI. Calendar Items
- XVII. Adjournment

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City and County of San Francisco



Rent Stabilization and
Arbitration Board

Residential Rent Stabilization
and Arbitration Board

MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, March 6, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

MAR 19 2001

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Vice-President Marshall called the meeting to order at 6:16 p.m.

II. Roll Call

Commissioners Present:

Becker; Gruber; Hobson; Justman; Lightner;
Marshall; Mosser; Murphy.

Commissioners not Present:

Aung; Wasserman.

Staff Present:

Gartzman; Grubb; Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of February 21, 2001.
(Gruber/Becker: 5-0)

IV. Public Comment on Whether the Board Should Go Into Closed Session

Robert Pender objected to there being no general public comment section prior to the Board's going into Closed Session.

V. Vote on Whether to Go Into Closed Session Regarding the Case of Quigg v. Rent Board (Superior Court Case No. 316928) Pursuant to S.F. Administrative Code Section 67.11{a}

MSC: To go into Closed Session. (Gruber/Justman: 5-0)

VI. Closed Session re Quigg, supra, Pursuant to Government Code Section 54956.9{a}

The Board went into Closed Session from 6:19 to 7:11 p.m. with Deputy City Attorneys Marie Blits and Andrew Schwartz to discuss the case of Quigg v. Rent Board (Superior Court Case No. 316928).

VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Quigg, supra.

MSC: To not disclose the content of conversations held in Closed Session, except to provide an update as to the status of the Quigg litigation. (Gruber/Justman: 5-0)

VIII. Report on Any Actions Taken in Closed Session Regarding Quigg, supra, Pursuant to Government Code Section 54957.1(a)(2) and S.F. Administrative Code Section 67.14(b)(2)

Vice-President Marshall reported that the Board held a Closed Session to discuss the Quigg case with its attorneys. No actions were taken. She informed the public that Proposition H is still stayed pursuant to the Preliminary Injunction issued by Judge Robertson. If the Rent Board passes implementing regulations at this evening's meeting, the City Attorney will schedule a hearing before the same Judge and ask that the Preliminary Injunction be lifted.

IX. Remarks from the Public

Robert Pender of the Parkmerced Residents' Organization (PRO) informed the Board that the tenants at Parkmerced were affected by a fire that occurred close to where they live and park. Mr. Pender said that the "sense of community" felt by the residents was damaged by the way that management responded to the vandalism.

X. Public Hearing

The Board held a Public Hearing from 7:16 to 7:59 p.m. on proposed amendments to Sections 1.13, 7.10, 7.12, 7.13, 7.14 and 11.25 of the Rules and Regulations and proposed new Sections 7.19, 7.20, 7.21, 7.22, 7.23 and 7.24. The proposed amendments and additions concern landlord applications for certification of capital improvement costs and are intended to implement November 2000 Proposition H. Eighteen individuals addressed the Board as follows below:

1. Landlord Teresa Gognio said that no pro-landlord legislation has been passed by the Board, and asked if the Board was totally for tenants. Ms. Gognio said that she is "trapped by rent control" and that it is hard to find skilled workers.
2. Landlord Bill Alvarado told the Board that he has two units that his daughters currently live in. Mr. Alvarado said that when the units become available he would sell the building, because the economics aren't warranted at 60% of CPI.
3. Tenant Lorraine Calcagni of Lombard Place Apartments said that she hopes Prop. H is fair to small landlords. Ms. Calcagni said that the tenants at Lombard Place have had their rights denied at hearings before the Rent Board's Administrative Law Judge. Ms. Calcagni reiterated that \$8.4 million in costs is being passed through to the tenants in her building, which is "excessive", but there is no limit on passthroughs in the law prior to Proposition H.
4. Tenant Helen Fellows at Lombard Place asked the Board to implement Prop. H. Ms. Fellows said that the tenants' rents would double in five years, which will lead to displacement.
5. Tenant Representative Jennifer Welch of St. Peter's Housing Committee asked that the Board implement a Moratorium on the processing of capital improvement petitions, prior to the effective date of the Moratorium passed by the Board of Supervisors, since it is long-term tenants and seniors who are the most affected by capital improvement passthroughs.
6. Tenant Juana Selena Televiz said that her landlord never repaired anything. Now that he has finally fixed a few things, he is seeking a rent increase for capital

improvements. Ms. Televiz asked that the Board "be for tenants, and not for the landlords."

7. Tenant Janis Winchester said she lives in a building which was paid off long ago, but the landlord wants to make improvements in order to sell. Ms. Winchester says that, due to the lack of affordable housing for seniors, there is no place for her to move. Since the public and the Board of Supervisors have spoken, Ms. Winchester believes it a "moral outrage" that the Board is not implementing a Moratorium.

8. Landlord Peter Chen said that tenants who cannot afford to pay passthroughs should be protected by the Board's hardship appeal provisions. Mr. Chen argued that the purpose of capital improvement work is to improve tenants' living conditions, and that contractors do not work for free. Mr. Chen said that older buildings need the most work, but have the lowest rent paying tenants, and said that the recent earthquake in Seattle is a reminder of the need for capital improvements.

9. Tenant Michael Barrett said that, over 25 years, he has paid over \$125,000 in rent. Mr. Barrett maintained that upkeep and maintenance do not constitute capital improvements.

10. Rebecca Logue-Bovee of the Housing Rights Committee said that there "needs to be fair play" and asked that the Board stop processing petitions.

11. Tom Aviccoli-Mecca of the Housing Rights Committee expressed his opinion that Proposition H does provide for hardship for small landlords and a fair return, and is fair. Mr. Aviccoli-Mecca said that the need is to protect tenants who cannot afford to pay; and that a Moratorium is the only "decent, humane and moral thing to do."

12. Ted Gullickson of the Tenants' Union said that it has been 4 months since the voters spoke, which is "far too long" for the Board not to have passed regulations.

13. Marina Franco, who is on the Board of the S.F. Apartment Association, said that the proposed regulations provide a zero rate of return for small and medium landlords, although larger landlords may get something. Ms. Franco believes that "fair rate of return" was added to Prop. H merely to "sound fair."

14. Tenant Linda Rothfield said that the prior owner of her building failed to make repairs because he said he didn't have the money. Now, the new owner is imposing banked increases and attempting to pass through capital improvements, even though he acquired the building in bankruptcy. Ms. Rothfield finds it unfair that the owner is giving increases only to those tenants he wishes to, which are those who complain.

15. Tenant Carolyn Blair, who lives at the Northpoint Apartments and is with the Housing Rights Committee, said that her rent will go up \$100 in 5 years just from annual rent increases. Ms. Blair said that even high-income tenants are moving out of her building. Ms. Blair feels that the hardship is on tenants, since landlords will always have a place to live.

16. Tenant Arnold Cohn of Marina Cove Apartments said that there is an error in the Minutes of the meeting of February 21st because he spoke of a "tax-free"

rather than "tax-deductible" gift that could be made annually. Mr. Cohn said that Angelo Sangiacomo and Herbert Jaffee are the reasons we're all here. Mr. Cohn also believes that there is a problem in that Rent Board Administrative Law Judges have legal, but not construction, expertise; and they "understand pieces of paper, but not structures."

17. New landlord James Carsant said that buildings have a certain life, and capital improvements must be performed in order to provide safer, better, more energy efficient housing. Mr. Carsant believes that government was set up to "protect the little guy from the rule of the mob", and that the Commissioners will need "testicular fortitude" in order to do unpopular things.

18. Small landlord Ina Alvarez said that, if Proposition H survives, someone will need to put a cap on construction costs. Ms. Alvarez feels that there has to be something for small owners, and that "tenants can't get it all."

After the conclusion of the Public Hearing, several of the Commissioners made statements regarding the draft regulations. Commissioner Lightner said that it is unfortunate that Prop. H was drafted the way it was, since there is "little for property owners to support in these regulations." Commissioner Murphy expressed his belief that there is nothing the Board can do to these regulations to make them work; that the regulations do not function to provide rent increases for capital improvement costs; and that the Board is setting up a system for petitions that will fail. Commissioner Hobson said that he supported Prop. H, and had called for a Moratorium on the processing of capital improvement petitions on January 2nd. He also believes that the current law needs to be amended to provide relief for small landlords, and that these regulations are a "stop-gap measure." Commissioner Justman said that the Board has a duty and obligation to promulgate regulations to make Proposition H as workable as possible and that ultimately, it will be up to the courts to decide. Commissioner Gruber said that Proposition H was so poorly written, it would not benefit tenants; that the regulations are "unacceptable"; and that we have gone "many steps backward" in creating a process that is not beneficial to either side. The Board then passed the following motion:

MSC: To pass the proposed regulations and submit them to the court with a request that the court lift the Preliminary Injunction on implementation of Proposition H.
(Becker/Marshall: 3-2; Gruber, Lightner dissenting)

XI. Old Business

Fair Return/Implementation of Prop. H, Including Possible Implementation of a Moratorium on the Processing of Capital Improvement Petitions, Except for Seismic Work

Commissioner Becker began the discussion by proposing that the Rent Board implement an immediate Moratorium on hearing and deciding capital improvement petitions, except for certification of seismic work, since it is unclear how long it will take for the Judge to rule on whether or not to lift the stay on Prop. H and tenants are being affected. Commissioner Justman said that he had spoken with Commissioner Wasserman about this issue. They concurred that nothing had changed since this issue was first brought up in January to cause them to reconsider what they felt were legitimate policy reasons for not enacting a Moratorium at that time.

Commissioner Lightner responded that implementation of a Moratorium would be such a deviation from the Rent Board's normal procedures that Rules changes and a Public Hearing would be required. Commissioner Becker said that Judge Robertson had left this question up to the Rent Board's discretion, and it could be implemented as a Policy Directive to staff. Commissioner Murphy maintained that the Sunshine Ordinance requires specific language and a Public Hearing, while Commissioner Marshall asserted that this would constitute an administrative decision well within the Board's powers.

Commissioner Lightner then brought up recent changes by the Fair Political Practices Commission (FPPC) to the conflict of interest rules governing when an elected or appointed official can vote on matters in which they have an actual or potential economic interest. Commissioner Lightner was concerned that the Landlord Commissioners on the Board are dissimilarly situated from 90% of the landlords in San Francisco, in that they have pending petitions on file, and therefore they could be precluded from voting on a Moratorium. Deputy City Attorney Marie Blits told the Landlord Commissioners that they could receive legal advice from the ethics attorneys at her office and could recuse themselves from voting on the issue at this meeting if they felt uncomfortable. However, it was Ms. Blits' opinion that it was the call of the Commission whether to formally amend the Rules and Regulations or just give direction to staff should a majority of the Board wish to implement a Moratorium. The Landlord Commissioners recused themselves as follows:

MSC: To recuse Commissioner Lightner. (Lightner/Gruber: 5-0)

MSC: To recuse Commissioner Murphy. (Murphy/Gruber: 5-0)

MSC: To recuse Commissioner Mosser. (Gruber/Becker: 4-0)

Commissioner Becker then made the following motion:

MSC: That it be administrative policy to immediately stop hearing and deciding capital improvement petitions except those requesting certification of seismic work only. (Becker/Marshall: 2-2; Gruber, Justman dissenting)

The Rent Board will therefore continue to process capital improvement petitions until the effective date of the Moratorium enacted by the Board of Supervisors, or April 1, 2001. The Board then briefly discussed how that Moratorium will be implemented with Senior Administrative Law Judges Sandy Gartzman and Tim Lee. Staff will provide the Commissioners with a more detailed proposal for how to implement the Moratorium for discussion at the March 20th meeting.

XII. Consideration of Appeals

A. 1135 Masonic Ave. #7

AT2K0244
(cont. from 1/30-01)

The tenant's petition alleging an unlawful increase in rent from \$1,017.00 to \$2,100.00 was denied because the Administrative Law Judge found that the increase was justified pursuant to Costa-Hawkins. The tenant appealed on the grounds of financial hardship.

The day before the Board meeting, the tenant submitted additional arguments in support of his appeal, including allegations that he resided at the rental unit pursuant to an agreement with an agent of the landlord, and therefore was not a subtenant subject to a Costa-Hawkins rent increase. Since there was no evidence that this submission had been served on the landlord, the Commissioners continued consideration of this appeal in order for staff to serve the landlord and provide an opportunity to him to respond, should he desire to do so.

MSC: To deny the appeal. (Gruber/Justman: 4-1; Marshall dissenting)

B. 4220 Cesar Chavez #429

AT2K0232
(cont. from 1/30/01)

''

The tenant's petition alleging substantially decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claimed not to have received the Notice of Hearing, and attached the requisite Declaration of Non-Receipt of Notice of Hearing. At the meeting on January 30th, consideration of this appeal was continued in order for staff to contact the tenant and obtain additional information.

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Becker/Gruber: 5-0)

MSC: To accept the appeal and remand the case for a new hearing.
(Marshall/Hobson: 4-1; Gruber dissenting)

C. 542 Mason #30 & 60

AT2K0237 & -43
(cont. from 1/30/01)

The landlords' petition for certification of capital improvement costs to 19 of 34 units was granted, resulting in a monthly passthrough in the amount of \$15.43. The tenants in ten units appealed the Decision on the grounds of financial hardship. At the meeting on January 30th, the Board voted to accept the appeals of the tenants in unit numbers 1, 20, 23, 50 and 55 and remanded those cases for a hearing on the tenants' claims of financial hardship; and to deny the appeals of the tenants in unit numbers 52, 53 and 54. The appeals of the tenants in unit numbers 30 and 60 were continued in order for staff to obtain additional information.

MSC: To deny the appeal of the tenant in unit #30 without prejudice to the tenant's providing the requested information within 60 days, at which time the appeal would be re-opened.
(Gruber/Lightner: 5-0)

MSC: To deny the appeal of the tenant in unit #60.
(Gruber/Lightner: 5-0)

D. 1010 Bush St. #105

AT2K0230
(cont. from 2/6/01)

The tenant's petition alleging decreased housing services because of the revocation of overnight guest privileges was denied because the Administrative Law Judge found that the right to have overnight guests was not included in the tenant's base rent at the commencement of the tenancy, nor did the tenant pay additional consideration for this service at a later date. The tenant appeals, claiming that her

case was not given adequate consideration by the Administrative Law Judge; that she never signed a lease or rental agreement restricting visiting hours; and that the revocation of overnight privileges was in retaliation for her having filed a petition at the Rent Board.

At the meeting on January 16th, it was the consensus of the Board to continue consideration of this case in order for Commissioners Becker and Marshall to research the constitutional question of whether the tenant's right to have overnight guests could be restricted; and for the Administrative Law Judge to address the issue of retaliation. After a brief discussion on January 16th, consideration of this case was again continued.

MSC: To deny the appeal. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

E. 1819 Golden Gate Ave. #12

AT010006

The tenant's petition alleging decreased housing services based on claims of inadequate security in the building and harassment by the landlord was denied, because the Administrative Law Judge found that the tenant had failed to meet his burden of proof. On appeal, the tenant maintains that the ALJ is racist and exhibited bias against him; that there are many factual mis-statements in the Decision; and that he was not provided ample opportunity to present his case.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

F. 2330 Larkin #32

AT010007

The landlords' petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to the tenants in twenty units. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case on the existing record to consolidate this appeal with outstanding appeal number AT2K0193, which is the tenant's hardship appeal of a decision certifying capital improvement costs. (Lightner/Gruber: 5-0)

XIII. Communications

The Commissioners received a new Commissioners' Roster and the office workload statistics for the month of January, 2001.

IX. Remarks from the Public (cont.)

Robert Pender commended the Commissioners on the way they had handled themselves.

XIV. New Business

Commissioner Lightner introduced proposed amendments to Rules and Regulations Sections 1.21 and 6.15©(3). The definition of "Tenant" in Section 1.21 would be amended to require that the tenant occupy the unit as their principal place of residence in order to be covered by the Rent Ordinance. Section 6.15©(3)

would be amended to require a Master Tenant to pay a proportionate share of rent for the unit. These proposals will be discussed at the March 20th meeting.

XV. Calendar Items

March 13, 2001 - NO MEETING

March 20, 2001

10 appeal considerations

Old Business:

A. Fair Return/Implementation of Prop. H

B. Proposed Amendments to Rules Sections 1.21 & 6.15©(3)

New Business: Ellis Rescission

XVI. Adjournment

Vice-President Marshall adjourned the meeting at 9:30 p.m.

**NOTICE OF PUBLIC HEARING****DATE: March 6, 2001**

DOCUMENTS DEPT.

TIME: 7:00 P.M.

FEB 28 2001

**PLACE: 25 Van Ness Ave., #70, Lower Level
SAN FRANCISCO, CALIFORNIA**SAN FRANCISCO
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155 2/26/01

The Rent Stabilization and Arbitration Board Commissioners will conduct a Public Hearing on Tuesday, March 6, 2001, where they will continue to consider proposed amendments to Sections 1.13, 7.10, 7.12, 7.13, and 11.25 of the Rules and Regulations and proposed new Sections 7.19, 7.20, 7.21, 7.22, 7.23 and 7.24. Proposed changes were previously considered by the Commission at a Public Hearing on February 21, 2001, after they were first presented to the Commission on February 6, 2001. In addition, the Commission will be considering proposed changes to existing Section 7.14, and further changes to proposed new Section 7.22.

The proposed amendments and additions concern landlord applications for certification of capital improvement costs and are intended to implement November 2000 Proposition H. These amendments and additions will be effective only if the stay of implementation of Proposition H ordered on December 20, 2000 in Quigg vs. City and County of San Francisco, et al., Superior Court case number 316928, is no longer in effect.

Written comments may be submitted prior to the hearing. Persons wishing to respond should do so by noon on Thursday, March 1st, to ensure that the Commissioners have time to consider their submissions. 13 copies should be provided to the Rent Board office. Oral testimony will also be taken on the 6th. Speakers will be limited to three minutes each. The proposed language is attached.

City and County of San Francisco

Residential Rent Stabilization
and Arbitration Board



NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,

March 20, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

MAR 19 2001

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PUBLIC LIBRARY
FAY 3/16/01

I. Call to Order

KHIN MAI AUNG

II. Roll Call

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

III. Approval of the Minutes

FREDERICK HOBSON

ANTHONY JUSTMAN

IV. Remarks from the Public

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 134 Duboce #4

AT010009

The tenant appeals the decision denying a claim of decreased housing services but granting a claim of failure to repair.

B. 1520 Gough #605

AT010010

The tenant appeals the decision denying a claim of decreased housing services due to alleged noise from an upstairs tenant.

C. 1945-49-53-55 Lyon St.

AT010012 & AL010011

The landlords and one tenant appeal the decision granting rent increases based on increased operating expenses but finding several notices of rent increase to be defective.

D. 975 Sutter St. #3

AT010008

The tenant appeals the decision partially granting claims of decreased housing services.

E. 740 Monterey Blvd. #111

AL010022

The landlord appeals the remand decision granting deferral of a capital improvement passthrough due to financial hardship.

F. 2136 Broderick St.

AT010016 thru -21

Six tenants appeal the decision granting certification of capital improvement costs.

G. 2460 Folsom, Unit A

AT010023

The tenant appeals the dismissal of her petition alleging an unlawful rent increase due to her failure to appear at the properly noticed hearing.

H. 1670 Clay St., Apts. 6 & 7

AT010013 & -14

Two tenants appeal the decision certifying capital improvement costs.

I. 350 Yerba Buena Ave.

AL010015

— The landlord appeals the decision partially granting claims of unlawful rent increases and decreased housing services.

J. 1720 Bryant St.

AL010024

The landlord appeals the decision granting rent increases based on increased operating expenses but determining rent overpayments.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Implementation of Prop. H, Including the Moratorium Ordinance

B. Proposed Amendments to Sections 1.21 and 6.15©(3) of the Rules and Regulations

IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.19(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

Ellis Rescission

XI. Calendar Items

XII. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

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There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency’s compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government’s duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people’s review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 20, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

DOCUMENTS DEPT.

MAR 30 2001

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PUBLIC LIBRARY

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LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Hobson; Justman; Lightner;
Marshall; Mosser; Wasserman.
Commissioners not Present: Murphy.
Staff Present: Helton; Lee; Wolf.

Commissioner Gruber appeared on the record at 6:15 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 6, 2001.
(Becker/Lightner: 5-0)

IV. Remarks from the Public

Robert Pender of the Parkmerced Residents' Organization (PRO) informed the Commissioners that he and other tenants at Parkmerced had received a copy of their landlord's petition for rent increases based on increased operating expenses, which will be heard on April 23rd and 25th. Tenant Dian Hunter of 1520 Gough #605 told the Board of the stress she is experiencing because of the noise and harassment she perceives from an upstairs neighbor.

V. Consideration of Appeals

A. 134 Duboce #4

AT010009

The tenant's petition alleging various decreased housing services was denied. The tenant's claim that the landlord had failed to make requested repairs was granted, and the landlord was found liable to the tenant in the amount of \$37.81 for a one and one-half month period when code violations existed on the premises. The tenant appeals, claiming that: parking was listed as available in the advertisement for the unit; the repairs were not performed; oral and written notice of the problems was provided to the landlord and the landlord's agent; the stove is inadequately ventilated; there are factual inaccuracies in the Decision; and the Administrative Law Judge should have considered his post-hearing claim regarding the landlord's refusal to allow him to obtain a roommate.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

B. 1520 Gough #605

AT010010

The tenant's petition alleging decreased housing services due to noise from an upstairs neighbor was denied because the Administrative Law Judge found that the tenant had failed to meet her burden of proving that there is a problem, or that the landlord had failed to respond reasonably to her complaints. On appeal, the tenant claims that the Administrative Law Judge ignored her evidence that the upstairs tenant has continuously harassed her for almost five years.

MSC: To deny the appeal. (Lightner/Gruber: 4-1; Marshall dissenting)

C. 1945-49-53-55 Lyon

AT010012 & AL010011

The tenant's appeal was filed 3 days late because she calculated her due date from the date the Decision was postmarked, rather than mailed.

MSC: To find good cause for the late filing of the appeal.
(Becker/Marshall: 5-0)

The landlords' petition for 5 of 6 units based on increased operating expenses was granted, resulting in 7% increases in the tenants' base rents. It was determined, however, that the landlords' notices of rent increase were not legally valid and that proper notices must be re-issued. The landlords appeal the determination that their notices of rent increase were void, pointing out that their notices referenced the petition filed with the Rent Board, which provided the tenants with actual notice as to the amount of the increase they would be receiving. The tenant in one unit also appeals the Decision, claiming that: she is being unfairly singled out because she is the only tenant held liable for retroactive amounts owed; that recent legislation requires that she be given 60-day notice; and that there are no evident benefits to her from the alleged increased expenses.

MSC: To deny the landlords' appeal. (Becker/Marshall: 3-2; Gruber, Lightner dissenting)

MSC: To deny the tenant's appeal. (Gruber/Lightner: 3-2; Becker, Marshall dissenting)

D. 975 Sutter St. #3

AT010008

The tenants' petition alleging decreased housing services was granted in part and denied in part. The landlord was found liable in the amount of \$57.12 due to a broken front door which did not close and lock. However, the tenant's claim of a defective door buzzer was denied because the Administrative Law Judge (ALJ) found that the tenants had failed to prove that there was a problem, nor did they notify the landlord of the alleged condition. On appeal, the tenants claim that their failure to enter into a mediated settlement resulted in the ALJ's having been prejudiced against them; that the Findings of Fact in the Decision are contradicted by recorded testimony at the hearing and actions of the landlord's agents; and that the hearing was not conducted in accordance with applicable law.

MSC: To deny the appeal. (Lightner/Gruber: 4-1; Becker dissenting)

E. 740 Monterey Blvd. #111

AL010022

The landlord's petition for certification of capital improvement costs to 15 of 24 units was granted. The tenant's appeal on the grounds of financial hardship was granted and the Administrative Law Judge found sufficient financial hardship to warrant a one-year deferral of the passthrough, in order for the tenant's adult daughter to obtain employment. The landlord appeals the remand decision, asserting that: the tenant's adult daughter, who resides in the unit, failed to document her income; the tenant's five other adult children should be expected to aid in the payment of the passthrough; and at the time the tenant moved in to the unit she was close to retirement, and the rent at that time would have been greater than the Social Security benefit she could have expected to receive.

MSC: To deny the appeal. (Marshall/Becker: 3-2; Gruber, Lightner dissenting)

F. 2136 Broderick St.

AT010016 thru -21

The landlord's petition for certification of capital improvement costs to 12 of 20 units was granted, resulting in a \$15.10 monthly passthrough to most of the tenants. The tenants in six units appeal, claiming that: the work was performed in order to correct code violations; the work was necessitated by the deferred maintenance of the current owner; the structural/seismic work was not performed in a lawful manner; work done in the basement presented health risks to the tenants; and the documentation provided by the landlord was inadequate.

MSC: To deny the appeals. (Lightner/Gruber: 5-0)

G. 2460 Folsom, Unit A

AT010023

The tenant's petition alleging an unlawful increase in rent was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims that she fell ill on the day of the hearing.

MSC: To accept the appeal and remand the case for a new hearing; scheduling shall be done at the convenience of the landlord as much as possible, and no further appeals will be accepted from the tenant should she again fail to appear, absent extraordinary circumstances. (Becker/Marshall: 4-1; Gruber dissenting)

H. 1670 Clay, Apts. 6 & 7

AT010013 & -14

The landlords' petition for certification of capital improvement costs was granted, in part. Two tenants appeal the Decision. The tenant in unit #6 claims that the landlords waived their right to pass through the costs of new windows in a confidential settlement agreement between the parties in 1999. The tenant in unit #7 alleges that a closet bend (toilet pipe) for which she was charged, was not replaced in her unit.

MSC: To deny both appeals. (Lightner/Gruber: 4-1; Becker dissenting)

I. 350 Yerba Buena Ave.

AL010015

The tenant's petition alleging an unlawful rent increase and decreased housing services was granted in part and denied in part. The Administrative Law Judge found that the single family dwelling was not exempt pursuant to Costa-Hawkins because the tenants moved in as roommates of an individual who had lived in the unit since 1984, and therefore the tenancy commenced prior to January 1, 1996. However, an increase in rent from \$700 to \$1,600 per month in May of 1998 upon the departure of the original tenant was found to be lawful. A later rent increase for an additional occupant in the unit was determined to be null and void and the landlord was found liable to the tenant in the amount of \$3,360.00. The tenant's claim of decreased housing services was granted only as to a leaking shower stall and the landlord was found liable in the amount of \$64.00 for this condition. On appeal, the landlord argues that: there is a computational error in the Decision; the premises are exempt pursuant to Costa-Hawkins; the landlord is entitled to the noticed increase pursuant to the banking provisions of the Ordinance; and the tenancy was created in 1998, and therefore the owner is entitled to establish the initial and all subsequent rental rates.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to determine whether the rent increase is authorized by banking or to determine the applicability of Civil Code Section 1954.53(d) {Costa-Hawkins}, if any.
(Marshall/Becker: 5-0)

J. 1720 Bryant St.

AL010024

The landlords' petition for rent increases based on increased operating expenses for two units was granted, resulting in 7% increases in the tenants' base rents. However, rent overpayments in the amount of \$1,329.78 were determined to be owing to the tenants in one unit due to a rent increase imposed due to an additional occupant in the unit. On appeal, the landlords maintain that the version of Rules and Regulations Section 6.13 in effect at the time the rent increase was given did not preclude a rent increase for an additional occupant, but applied to newborn children only.

MSC: To deny the appeal. (Marshall/Becker: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A letter from the tenants at the Lombard Place Apartments regarding their landlord's pending petition for certification of capital improvement costs.

B. An ad posted on Ebay offering to turn over a rent controlled apartment to a subtenant for a \$4,800 payment.

C. The office workload statistics for the month of February, 2001.

VII. Director's Report

The Commissioners were reminded that their Statements of Economic Interest are due on April 2nd.

VIII. New Business

Ellis Rescission

The Board discussed a Memorandum from Senior Administrative Law Judges Tim Lee and Sandra Gartzman regarding the problem of owners rescinding Ellis notices of withdrawal prior to the recording of a Notice of Constraints against the property. By so doing, an owner is free to re-rent the vacated units at market rent, thereby obtaining the benefits of an Ellis eviction without any of the burdens. In the past, it has been staff's practice to allow an owner to rescind an Ellis notice of withdrawal in two circumstances: 1) after the effective date of withdrawal, only upon a showing that one or more of the existing tenancies was continuing; and 2) prior to the effective date of withdrawal, without any showing as to the status of the existing tenancies. In three recent cases, owners served Ellis eviction notices and filed notices of intent to withdraw with the Rent Board. After the owners negotiated move-out settlement agreements with the tenants in which the tenants waived all rights under the Rent Ordinance and the Ellis Act, the owners requested to rescind the Ellis notices prior to the effective date of withdrawal. Staff therefore recommended that rescission should only be allowed upon a showing that one or more of the existing tenancies was not terminated so that the owner did not in fact withdraw all units from the rental market.

During the Board's discussion of this proposal, Commissioner Wasserman expressed concerns that the policy regarding rescission of an Ellis notice of withdrawal had been silent, but was known to practitioners in this area. It was the consensus of the Board, therefore, that owners in the three pending cases should be allowed to rescind, but staff will make the public aware that the Board is considering changing the prior policy regarding rescission. Commissioner Becker asserted that an owner should "have to think long and hard before Ellising", and Commissioner Marshall felt that an owner should have to show that no tenancies were terminated due to receipt or threat of an Ellis eviction notice. Commissioner Hobson felt that it can be counter-productive in some circumstances not to allow an owner to rescind an Ellis filing, and that it would be preferable to put in language to protect tenants who have vacated their units prior to the owner's rescission. Commissioner Lightner suggested a letter to tenants telling them that their landlord subsequently rescinded the notice of intent to withdraw, and informing them that they might have a claim for wrongful eviction. The Board debated the question of how many units should be required to remain in place in order to allow rescission, and whether the amount of money the displaced tenant received pursuant to settlement with the landlord should make any difference. As there was no consensus on this question, Tim Lee was asked to draft a regulation without specifying the number of units, to be discussed at the next meeting, and possibly put out for Public Hearing thereafter.

IX. Old Business

A. Implementation of Prop. H, Including the Moratorium Ordinance

The Board received a Memorandum from Senior Administrative Law Judges Sandy Gartzman and Tim Lee outlining how staff will implement the Moratorium on processing capital improvement petitions, to take effect April 1st. Included in the packet were copies of the Memoranda prepared for the public, including: an

Addendum to Landlord Capital Improvement Petitions (for new filings); Memorandum to Tenants Regarding Landlord Petition for Certification of Non-Seismic Capital Improvement Costs (for new filings); a Memorandum to Landlords and Tenants Regarding Pending Capital Improvement and Combined Capital Improvement/Operating and Maintenance Petitions for Which No Decision Has Been Issued as of April 1, 2001 (for pending petitions); a Request for Continued Processing (before Decision); a Memorandum to Landlords and Tenants Regarding Pending Appeals of Capital Improvement Decisions (for pending appeals); and a Request for Continued Processing (after appeal). The Commissioners thanked Ms. Gartzman and Mr. Lee for all their hard work.

B. Proposed Amendments to Sections 1.21 and 6.15©(3) of the Rules and Regulations

The Board discussed two proposals introduced by Commissioner Lightner. The first, an addition to Rules Section 6.15, would require that a master tenant who sublets a part of the unit pay his or her proportionate share of the rent for the unit, in an effort to "preserve affordable housing." Commissioners Marshall and Becker indicated that, while they did not have a problem with the thrust of the new Section, they wanted to make sure that the cause of action accrued to the sub-tenant only, and wouldn't be a basis for intervention between roommates on the part of the landlord. The Board asked that staff review and work on refining the language of the proposed subsection, which will be discussed at the April 24th Board meeting.

The second proposal would amend Rules Section 1.21 by adding a "principal place of residence" requirement to the definition of "tenant", and require that the tenant "permanently occupy" the premises. The Commissioners asked that the City Attorney provide them with a Memorandum on whether this can be accomplished through an amendment to the Rules and Regulations, or whether an Ordinance change would be required.

IV. Remarks from the Public (cont.)

Robert Pender introduced a copy of a speech he delivered at a meeting of P.R.O. held on Sunday, March 18th. In his speech, Mr. Pender encouraged his fellow residents at Parkmerced to "fight back and participate in defending our affordable housing."

Upon being informed of the recent death of Commissioner Murphy's father, President Wasserman expressed condolences on behalf of the Board.

X. Calendar Items

March 27, 2001 - NO MEETING

April 3, 2001

5 appeal considerations

Old Business:

Ellis Rescission

XI. Adjournment

President Wasserman adjourned the meeting at 8:57 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
April 3, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

fax 3/29/01
DOCUMENTS DEPT.

- I. Call to Order
 - II. Roll Call
 - III. Approval of the Minutes
 - IV. Remarks from the Public
- KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

MAR 30 2001

SAN FRANCISCO
PUBLIC LIBRARY

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations,
members of the public shall be limited to comments of no more
than 3 minutes' duration.

V. Consideration of Appeals

A. 3311 – 20th St. AL010026

The landlord appeals the decision granting a claim of unlawful rent
increase, arguing that the increase is authorized by Costa-Hawkins.

B. 1736 Polk St. #120 AT010025

The landlord appeals the decision granting a claim of unlawful rent
increase after a rent discount for services provided by the tenant was
terminated by the landlord.

C. 2631 Ortega AL020030

The landlords appeal the decision granting claims of decreased housing
services and determining rent overpayments.

D. 935 Geary #208 AT010031

The tenant appeals the decision denying a claim of decreased housing
services based on pest infestation.

E. 2850 – 21st St. AL010033

The landlord appeals the decision granting a claim of unlawful rent
increase, asserting that the premises are used for commercial, rather than
residential, purposes.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
 - Ellis Rescission
- IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- X. New Business
- XI. Calendar Items
- XII. Adjournment

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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT
POLLY MARSHALL
VICE-PRESIDENT

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, April 3, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

APR 16 2001

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Hobson; Lightner; Marshall;
Mosser; Wasserman.
Commissioners not Present: Justman.
Staff Present: Lee; Wolf.

Commissioner Aung appeared on the record at 6:16 p.m.; Commissioner Murphy arrived at the meeting at 6:39 p.m. Commissioner Mosser went off the record at 8:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 20, 2001 with the following correction: under Old Business, Ellis Rescission, to reflect that Commissioner Lightner was not suggesting that a letter be sent to tenants telling them that their landlord subsequently rescinded the notice of intent to withdraw, and informing them that they might have a claim for wrongful eviction but, rather, that this was existing policy. (Becker/Lightner: 5-0)

IV. Remarks from the Public

A. Landlord Lisa Ng asked questions concerning Rent Board jurisdiction over a single family dwelling that has occupied rooms in the basement pursuant to Costa-Hawkins.

B. The attorney for the new landlords involved in the case at 2631 Ortega (AL020030), Robert Peterson, III, informed the Board that the new owners have authorized the prior owner to file the appeal in this matter. He asserted that laches should bar the tenant's recovery, and said that, since the landlord denied that he received notice from the tenant, notice was not "verifiable."

C. The tenant in the case at 935 Geary #208 (AT010031), Robin Krop, asked certain procedural questions pertaining to her appeal.

D. Richard Yan, the prior owner of the property at 2631 Ortega (AL020030), asked the criteria for the Board's accepting appeals and scheduling remand hearings.

V. Consideration of Appeals

A. 3311 – 20th St.

AL010026

The tenant's petition alleging an unlawful increase in rent from \$1,268.00 to \$3,950.00 was granted. The Administrative Law Judge found that the tenant, although not a signatory to the original lease agreement, moved in at the commencement of the tenancy and was an original occupant who took possession of the unit pursuant to the October 1, 1996 rental agreement. Additionally, two previous management companies accepted the entire monthly rent from the tenant over a three year period and otherwise treated the tenant as a co-tenant. Therefore, the tenant was found not to be a sub-tenant subject to a Costa-Hawkins rent increase when the last of the original occupants vacated the unit. On appeal, the landlord maintains that: the tenant was a subsequent occupant who did not occupy the premises prior to January 1, 1996 and came into possession of the unit after the named occupants in the written lease; the tenant never entered into an agreement with the prior owners for occupancy of the premises; the original lease signatories were the only persons who had an agreement with the owner on the date of execution of the relevant rental agreement, and the tenant did not move in to the unit until after that time; the tenant cannot be a "co-tenant" since her agreement was with the other tenants in the unit, and not with the owner; and acceptance of rent from the tenant did not operate as a waiver because the owner had not received written notice and thereafter accepted rent.

MSC: To deny the appeal. (Becker/Marshall: 3-2; Gruber, Lightner dissenting)

President Wasserman wished the record to reflect that she did not find the argument that the tenant was an original occupant compelling, nor was the lack of a 6.14 notice dispositive in this case. Commissioner Wasserman also felt that the mere acceptance of rent was not sufficient to make the petitioner a tenant. Rather, it was the combination of accepting rent from her for two years and naming the petitioner on two annual rent increase notices that made her a tenant.

B. 1736 Polk #120

AT010025

The tenant's petition alleging an unlawful increase in rent was granted and a proposed increase from 450.00 to \$750.00 was found to be unlawful. The tenant had moved in at an original base rent of \$180.00, which amount was reduced to \$50.00 because the tenant performed repair services for the prior landlord. The Administrative Law Judge found that, with proper notice, the new owner may increase the tenant's rent to \$300.06 – the \$180.00 initial base rent plus allowable annual and banked increases. The landlord appeals, asserting that: the tenant was not credible in his testimony; the tenant failed to prove that he had been paying \$50.00 in rent; the tenant commenced occupancy of the unit as the building manager, and not as a tenant; the Administrative Law Judge exhibited bias toward the tenant and ignored unbiased testimony of the former building manager; and the Decision is unfair, presents a hardship to the landlord and does not promote the policies and purposes of the Ordinance.

MSC: To recuse Commissioner Aung from consideration of this appeal.
(Becker/Lightner: 5-0)

MSC: To deny the appeal. (Becker/Marshall: 3-2; Gruber, Lightner dissenting)

C. 2631 Ortega

AL010030

The tenant's petition alleging decreased housing services was granted and the landlords were found liable in the amount of \$14,800.00 due to long-standing habitability defects on the premises. Additionally, \$3,000 in rent overpayments were determined to be owing from the landlords to the tenant. On appeal, the landlords maintain that: the 3-year Statute of Limitations found in the Code of Civil Procedure should apply to this case; the tenant failed to prove that there was long-term verifiable notice to the landlords of the conditions; the tenant remedied the problems with the garage and rear doors by engaging in self-help; and the amounts granted were arbitrary and not supported by the evidence.

MSC: To accept the appeal and remand the case to the Administrative Law Judge only to find that the first verifiable notice to the landlord of the conditions was with the issuance of the Notice of Violation from the Department of Building Inspection, and to adjust the amount of the rent reductions accordingly. (Lightner/Gruber: 4-1; Becker dissenting)

D. 935 Geary #208

AT010031

The tenant's petition alleging a substantial decrease in services was denied because the Administrative Law Judge found that the landlord had acted promptly and reasonably to address the infestation of bedbugs in the tenant's room, and that the tenant had been totally compensated for the two-week period between notice of the problem and the landlord's amelioration efforts. The tenant appeals, claiming that she should receive a rent reduction for the 11-week period when she suffered from the problem, but had not yet informed management of the hotel.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

E. 2850 – 21st St.

AL010033

The tenant's petition alleging unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$9,765.00 because the Administrative Law Judge found that the landlord's agents knew that the unit was being used as a residence, rather than a commercial space. On appeal, the landlord argues that: the landlord did not raise or charge rent to the petitioning subtenant and only accepted rent on behalf of the master tenant, so that the subtenant is not entitled to rent refunds; and the Rent Board does not have jurisdiction over this case, since neither the master or subtenant were residential tenants.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a letter from the landlord involved in the case concerning 1718-1722 Bryant St. (L2K1370), asking that the Board reconsider their denial of his appeal or specify the basis for the denial.

VII. Director's Report

In the absence of Executive Director Grubb, Senior Administrative Law Judge Tim Lee provided the Board with an update as to the status of the Quigg litigation concerning Proposition H. Pursuant to the Board having passed regulations to implement the Proposition, the City Attorney filed a Motion for Summary Judgment and to Dissolve the Preliminary Injunction on March 28th. Two Complaints in Intervention have been filed by the landlords in the cases concerning Marina Cove and Lombard Place Apartments. A hearing that had been scheduled for April 25th was taken off the calendar and continued to May 11th in order to give the Intervenor time to respond to the City's Motion for Summary Judgment and to file Cross-Motions for Summary Judgment. While the Intervenor's Complaints challenge the legality of the Moratorium on processing of capital improvement petitions as well as the merits of Prop. H, no TRO or Motion for Preliminary Injunction has been filed.

VIII. Old Business

Ellis Rescission

The Board continued their discussion of the problem of owners rescinding Ellis notices of withdrawal prior to the recording of a Notice of Constraints against the property. By so doing, an owner is free to re-rent the vacated units at market rent, thereby obtaining the benefits of an Ellis eviction without any of the burdens. In the past, it has been staff's practice to allow an owner to rescind an Ellis notice of withdrawal in two circumstances: 1) after the effective date of withdrawal, only upon a showing that one or more of the existing tenancies was continuing; and 2) prior to the effective date of withdrawal, without any showing as to the status of the existing tenancies. In three recent cases, owners served Ellis eviction notices and filed notices of intent to withdraw with the Rent Board. After the owners negotiated move-out settlement agreements with the tenants in which the tenants waived all rights under the Rent Ordinance and the Ellis Act, the owners requested to rescind the Ellis notices prior to the effective date of withdrawal. Staff had therefore recommended that rescission should only be allowed upon a showing that one or more of the existing tenancies was not terminated so that the owner did not in fact withdraw all units from the rental market.

During the Board's discussion of this proposal at the meeting on March 20th, Commissioner Wasserman expressed concerns that the policy regarding rescission of an Ellis notice of withdrawal had been silent, but was known to practitioners in this area. It was the consensus of the Board, therefore, that owners in the three pending cases should be allowed to rescind, but staff will make the public aware that the Board is considering changing the prior policy regarding rescission. At that meeting the Board debated the question of how many units should be required to remain in place in order to allow rescission, and whether the amount of money the displaced tenant received pursuant to settlement with the landlord should make any difference. As there was no consensus on this question, Senior Administrative Law Judge Tim Lee was asked to draft a regulation without specifying the number of units, to be discussed at the next meeting, and possibly put out for Public Hearing thereafter.

At this evening's meeting, the Board discussed a Memorandum prepared by Mr. Lee and Senior Administrative Law Judge Sandy Gartzman, which outlined three options: 1) after a Notice of Intent to Withdraw has been filed, the notice may not be rescinded unless the owner proves that none of the existing tenancies were terminated as a result; 2) rescission would be allowed if not all of the existing

tenancies were terminated; or 3) rescission would be allowed if a certain percentage of the existing tenancies, to be decided by the Board, were terminated as a result of the Ellis filing.

Commissioner Lightner expressed her concern that if owners couldn't rescind and make deals with their tenants, the Board could be pushing rental units off the market. She wondered if guidelines for fair deals wouldn't be better. Commissioner Wasserman suggested the possibility of the Board conducting "fair settlement hearings." Commissioner Becker felt that this was tantamount to legitimizing a "business deal" as a just cause for eviction. Commissioner Aung pointed out that there are not enough attorneys for all tenants faced with an Ellis eviction to be represented by counsel, especially considering the lack of defenses. Commissioner Mosser believes that the laws of supply and demand make it better to have units not taken off the market, which just drives rents up.

Considering the lack of unanimity on the Board for any of the approaches, and the complexity of the issue, the Commissioners decided to obtain input from the public and practitioners in this area. Since it is questionable as to whether the Board can enact regulations regarding Ellis, any proposal adopted would be to establish administrative policy. In addition to the three options outlined in the Memorandum from staff, a fourth option was added, which would require that at least one of the existing tenancies remains in place and all other tenancies vacated pursuant to a fair settlement. The Board then voted as follows:

MSC: To put out for Public Hearing four proposed Administrative Policy options regarding the circumstances in which rescission of an Ellis filing would be allowed. (Lightner/Gruber: 5-0)

The Public Hearing on this issue will be held on May 1st at 6:30 p.m.

IV. Remarks from the Public (cont.)

E. Landlord Kaushik Dattani, involved in the case at 3311 - 20th St., (AL010026) commended the Board for the hard work they obviously put in, but strongly suggested that the Commissioners listen to the transcripts of hearings before deciding on the merits of appeals.

F. Tenant Robiin Krop of 935 Geary St. #208 (AT010031) "applauded" the Board but said that the Commissioners failed to address her concerns. She explained that she couldn't give notice of the pest infestation to the management of her hotel, since she didn't know what the problem was for quite some time. She also said that the problem with the bedbugs has recurred.

IX. Calendar Items

April 10 & 17, 2001 - NO MEETINGS

April 24, 2001

5 appeal considerations

Old Business:

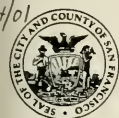
Proposed Amendments to Sections 1.21 & 6.15(c)(3) of the Rules

New Business:

Effective Date of Moratorium

X. Adjournment

President Wasserman adjourned the meeting at 8:35 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,

April 24, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

APR 13/01
DOCUMENTS DEPT.

AGENDA

APR 16 2001

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- I. Call to Order
 - II. Roll Call
 - III. Approval of the Minutes
 - IV. Remarks from the Public
- KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
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NEVEO MOSSER
BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 11 Naglee Ave. #3 AL010035

The landlord appeals the decision granting a claim of unlawful rent increase pursuant to Rules and Regulations Section 6.14.

B. 887 Bush St., #509 AL010034

The landlord appeals the decision granting a claim of decreased housing services due to the loss of motorcycle parking.

C. 863 - 41st Ave. AL010039

The landlord appeals the decision granting rent reductions due to decreased housing services.

D. 1769 Page St. AL010038

The landlord appeals the decision granting a claim of unlawful rent increase pursuant to Rules Section 6.14.

E. 286 Sagamore St. AL010036

The landlord appeals the decision granting a claim of decreased housing services.

- VI. Communications
- VII. Director's Report

VIII. Old Business

Proposed Amendments to Sections 1.21 and 6.15(c)(3) of the Rules and Regulations

IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

Effective Date of Moratorium

XI. Calendar Items

XII. Adjournment

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SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, April 24, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level DOCUMENTS DEPT.

MAY 1 1 2001

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I. Call to Order

President Wasserman called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Lightner;
Mosser; Murphy; Wasserman.
Commissioners not Present: Justman; Marshall.
Staff Present: Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of April 3, 2001.
(Becker/Lightner: 5-0)

IV. Remarks from the Public

A. James Driscoll, the tenant's attorney in the case at 11 Naglee Ave. #3 (AL010035), told the Board that his legal arguments on appeal were before them, and explained the circumstances behind the tenant's not having returned to the unit from her residence in Las Vegas.

B. Tenant Alma Morris of Lombard Place Apartments told the Board that she could not afford to pay thousands of dollars in passthroughs, and that she "didn't get rich, but did get old." Ms. Morris said that she "thought the battle was over with the passage of Proposition H."

C. Helen Fellows, a tenant at Lombard Place, told the Board that the landlord's petition for certification of capital improvement costs did not include subcontractor invoices and the petition should therefore be reconsidered and dismissed.

D. Tenant Lorraine Calcagni of Lombard Place took issue with the effective date of the Moratorium on processing capital improvement petitions. Ms. Calcagni told the Board the Ordinance passed Second Reading before the Board of Supervisors on February 20th and she believes it became law 30 days later, or March 22nd. Ms. Calcagni stated her belief that the 10 extra days for the Mayor to decide what to do has no effect on the effective date of the legislation.

E. Landlord Karen Crommie asked that the Board look favorably on and pass the two amendments proposed by Commissioner Lightner on this evening's Agenda to "plug loopholes and abuses" of the rent control law.

F. Tenant Bill Shockley of Lombard Place Apartments stated his opinion that the Decision in their case was rushed out to beat the Moratorium. Mr. Shockley told the Board that this forced the tenants to file appeals to preserve their rights, and that the briefing schedule agreed to by the attorneys for the two sides constituted "continued processing" of the appeals. Mr. Shockley asked that the Board hold the appeal deadlines in abeyance so that the parties are not forced to pay attorney's fees to make arguments that may be mooted by the disposition of Proposition H in the courts.

V. Consideration of Appeals

A. 11 Naglee Ave. #3

AL010035

The tenant's petition alleging an unlawful increase in rent from \$349.90 to \$1,200.00 was granted and the landlords were found liable to the tenant in the amount of \$5,155.44. Although the original tenant had not resided on the premises for several years, the subtenant moved in to the unit in 1995 and, therefore, no Costa-Hawkins increase was warranted. The Administrative Law Judge found that the landlords could not rely on their 6.14 notice, because the tenant had not "vacated" the premises and the landlords had waived their right to a market rent increase by their conduct. On appeal, the landlords argue that: the Rent Ordinance was promulgated to protect "tenants in residence", and the instant tenant resides out of State; the doctrine of estoppel should be applied to petitioner's conduct, since she represented that she was moving out of the unit only temporarily, and her immediate family members continued to assert that this was the case; and waiver does not apply to the facts of this case, since the landlord did not "intentionally relinquish a known right after full knowledge of the facts" because the tenant and her family members misrepresented the facts.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to vacate the Decision and find that, based on the facts in this case, the tenant has vacated the unit, having demonstrated no real indicia of an intent to return. (Wasserman/Gruber: 5-0)

B. 887 Bush St. #509

AL010034

The landlord's appeal was filed one day late because the landlord's attorney was in court for the two-week period prior to the appeal deadline.

MSC: To find good cause for the late filing of the appeal.
(Gruber/Becker: 5-0)

The tenant's petition alleging decreased housing services due to the loss of interior parking for his motorcycles was granted and the landlord was found liable in the amount of \$81.03 per month. On appeal, the landlord argues that: the Decision does not promote the policies and purposes of the Ordinance; because of questionable facts asserted by the petitioner, the case should have been evaluated in light of the written agreement regarding parking, and a subsequent agreement is invalid; the tenant failed to prove that parking was included in his rent at the inception of the tenancy; the tenant's self-serving statements at the hearing constitute hearsay, and should not be the basis for the decision; and the prior management company is engaged in litigation against the owner of the property, and therefore should not be considered credible.

MSC: To deny the appeal. (Becker/Aung: 3-2; Gruber, Lightner dissenting)

C. 863 – 41st Ave.

AL010039

The tenants' petition alleging decreased housing services was granted, and the new landlords were found liable in the amount of \$1,900.00 due to the tenants' inability to use their kitchen for a six and one-half month period. On appeal, the new owners claim that: they had no notice as to the petition that had already been filed by the tenants against the prior owner; and the tenants showed a lack of good faith by filing the instant claim.

MSC: To deny the appeal. (Becker/Aung: 3-2; Gruber, Lightner dissenting)

D. 1769 Page St.

AL010038

The tenant's petition alleging an unlawful increase in rent from \$1,627.89 to \$3,250.00 was granted because the Administrative Law Judge found that the petitioner was a tenant in the unit, rather than a subtenant, so that no increase was justified pursuant to Costa-Hawkins. Additionally, a 6.14 notice was not timely served. On appeal, the landlords claim that: the petitioner is a subtenant, who commenced occupancy of the unit pursuant to an agreement with the original tenants, and whose name is not on the lease; the prior landlord had no choice but to consent to petitioner's occupancy of the unit pursuant to the Board's Rules governing subletting and assignment; the landlord's acceptance of rent from petitioner was an accommodation, and did not alter his status as a subtenant in the unit; the Administrative Law Judge mischaracterized testimony at the hearing and misconstrued applicable law; alternatively, the petitioner is an assignee whose rent may be increased pursuant to Costa-Hawkins and the new owners did not waive this right; Rules Section 6.14 is inapplicable to the facts in this case because the petitioner did not have a rental agreement with the owners; and the prior and new owners did not have knowledge of petitioner's occupancy of the unit until the last of the original tenants vacated.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to vacate the Decision and find, based on the facts of this case, that no original tenants are currently occupying the premises, and the rent increase pursuant to Costa-Hawkins is authorized. (Lightner/Gruber: 3-2; Becker, Aung dissenting)

E. 286 Sagamore St.

AL010036

The tenant's petition alleging decreased housing services due to serious habitability defects on the premises was granted and the landlord was found liable to the tenant in the amount of \$12,206.25. On appeal, the landlord maintains that: at least four different attempts were made to repair the leaks, which were temporarily abated; the roof was repaired in March of 2,000, but rent reductions were granted through June; and the Administrative Law Judge failed to determine when rainfall occurred during the time period for which rent reductions were granted.

MSC: To deny the appeal. (Becker/Aung: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a letter from Ted Gullickson of the Tenants' Union requesting that the Board refer the landlord of the building at 15 Rico Way to the City Attorney for investigation of a possible wrongful eviction.

VII. Director's Report

Deputy Director Wolf informed the Board that the City Attorney had received a 10 day extension to file opposition papers in the case of Quigg vs. City and County of San Francisco, et al. (Superior Court Case No. 316928). The hearing on the City's Motion for Summary Judgment and to Dissolve the Preliminary Injunction has been continued to May 24, 2001 at 9:30 a.m. in Dept. 302 of the Superior Court. The plaintiffs' Cross-Motions for Summary Judgment will be heard at the same time.

President Wasserman asked that the Minutes reflect the Board's deep sorrow at the death of Peter Bellinger, and conveyed condolences to Executive Director Joe Grubb and Mr. Bellinger's family.

VIII. New Business

Effective Date of Moratorium

The Commissioners received a Memorandum from Deputy City Attorney Marie Blits confirming that, in accordance with Charter Sections 2.105 and 3.103, the effective date of the Moratorium on processing capital improvement petitions is April 1, 2001. In conjunction with the request of tenant Bill Shockley of Lombard Place Apartments earlier in the meeting, the Board decided to hold the briefing schedule previously agreed on by the attorneys for the parties in abeyance as long as the Moratorium is in effect.

Commissioner Lightner told the other Board members that, as a landlord with a pending capital improvement case, she was extremely impressed with the communications she had received from Rent Board staff concerning implementation of the Moratorium. President Wasserman expressed kudos to staff, especially Senior Administrative Law Judge Sandy Gartzman, for the enormous amount of thought and work that went into organizing and implementing the Moratorium.

IX. Old Business

Proposed Amendments to Rules and Regulations Sections 1.21 and 6.15©(3) of the Rules and Regulations

Consideration of this issue was continued to the meeting on May 1, 2001.

IV. Remarks from the Public (cont.)

G. John McCartlett said that it is difficult for members of the public to follow the Board's discussions since they do not have copies of appeal materials.

H. Mario Luchetti, the landlord in the case at 11 Naglee Ave. (AL010035), asked about the disposition of his appeal.

X. Calendar Items

May 1, 2001

2 appeal considerations

6:30 Public Hearing: Ellis Rescission

Old Business:

A. Ellis Rescission

B. Proposed Amendments to Rules Sections 1.21 & 6.15C(3)

May 8, 2001 - NO MEETING

XI. Adjournment

President Wasserman adjourned the meeting at 7:54 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
May 1, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

- I. Call to Order
 - II. Roll Call
 - III. Approval of the Minutes
 - IV. Remarks from the Public
- KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 34 Sixth St. #317

AT010045

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing.

B. 135 Sixth St., #410

AT010044

The tenant appeals the remand decision granting a claim of decreased housing services.

VI. Public Hearing

6:30 Ellis Rescission

VII. Communications

VIII. Director's Report

IX. Old Business

A. Ellis Rescission

B. Proposed Amendments to Sections 1.21 and 6.15(c)(3) of the Rules and Regulations

X. Remarks from the Public (cont.)

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NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- XI. New Business
- XII. Calendar Items
- XIII. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

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Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



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SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, May 1, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

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MAY 1 1 2001

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:15 p.m.

II. Roll Call

Commissioners Present:

Aung; Becker; Gruber; Hobson; Justman;
Lightner; Marshall; Mosser; Murphy;
Wasserman.

Staff Present:

Helton; Lee; Wolf.

III. Remarks from the Public

A. Landlord Jon Bumgarner spoke to the definition of "tenant" in the Ordinance because one of his tenants is a German citizen living and working in Germany. This individual has attempted to illegally sublet on three occasions, and the unit is "below market."

B. Tenant Jose Morales noted that the room was not large enough to accommodate the number of people in attendance and said that the public should be allowed to testify before the Board conducts its regular business.

C. Tenant Ernestine Weiss informed the Commissioners that the Golden Gateway complex rents units to corporations for use as short-term rentals, and said that the Board should "stop this practice."

D. Landlord Ida Rachael told the Board she needs help with an on-going problem with one of her tenants. Ms. Rachael said that the tenant's allegations of wrongful eviction were a "lie", and she doesn't agree with the rent reductions that were granted for decreased housing services.

IV. Consideration of Appeals

A. 34 Sixth St. #317

AT010045

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the properly noticed hearing. On appeal, the tenant claims that she and her representative misinterpreted the Notice of Hearing, and believed the hearing to concern other claims which she had previously settled with the landlord.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Marshall: 5-0)

B. 135 Sixth St. #410

AT010044

The tenant's petition alleging decreased housing services due to a leaky roof and damaged ceiling was granted on remand, and the landlord was found liable to the tenant in the amount of \$200.00. On appeal, the tenant maintains that the amount granted is insufficient compensation; and the landlord made several untruthful statements at the hearing.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

V. Public Hearing: Ellis Rescission

The Board has been discussing the problem of owners rescinding Ellis notices of withdrawal prior to the recording of a Notice of Constraints against the property. By so doing, an owner is free to re-rent the vacated units at market rent, thereby obtaining the benefits of an Ellis eviction without any of the burdens. In the past, it had been staff's practice to allow an owner to rescind an Ellis notice of withdrawal in two circumstances: 1) after the effective date of withdrawal, only upon a showing that one or more of the existing tenancies was continuing; and 2) prior to the effective date of withdrawal, without any showing as to the status of the existing tenancies. At the Board meeting on March 20th, the Commissioners debated the question of how many units should be required to remain in place in order to allow rescission, and whether the amount of money the displaced tenant received pursuant to settlement with the landlord should make any difference. As there was no consensus on this question, Senior Administrative Law Judge Tim Lee was asked to draft a new administrative policy without specifying the number of units.

At the April 3rd meeting, the Board discussed a Memorandum prepared by Mr. Lee and Senior Administrative Law Judge Sandy Gartzman, which outlined three options: 1) after a Notice of Intent to Withdraw has been filed, the notice may not be rescinded unless the owner proves that none of the existing tenancies were terminated as a result; 2) rescission would be allowed if not all of the existing tenancies were terminated; or 3) rescission would be allowed if a certain percentage of the existing tenancies, to be decided by the Board, were terminated as a result of the Ellis filing. Considering the lack of unanimity on the Board for any of the approaches, and the complexity of the issue, the Commissioners decided to obtain input from the public and practitioners in this area. In addition to the three options outlined in the Memorandum from staff, a fourth option was added, which would require that at least one of the existing tenancies remains in place and all other tenancies vacated pursuant to a fair settlement.

The Public Hearing on the four proposed administrative policy options regarding the circumstances in which rescission of an Ellis filing would be allowed commenced at 6:30 p.m. and concluded at 7:48 p.m. Thirty-six individuals addressed the Board as follows below:

1. Tenant Jose Morales prayed that we "come to our senses, and not try to maximize profits at the expense of the poor, especially seniors." Mr. Morales believes that the proposed "regulation" will "obliterate rent control and allow landlords to evict to jack up the rent."

2. Tenant Vince Pietro Matera pointed out that landlords are supposed to be going out of the rental business in good faith. Mr. Matera believes that, if the prior

tenant cannot be found, the unit should be re-rented at the prior rental amount. Otherwise, the landlord could collude with a tenant paying market rent and allow only that tenant to remain in the building.

3. Tenant John Daniels told the Board he was "devastated" when he received an eviction notice. Mr. Daniels believes that title to the building should be clouded immediately and anything less is similar to "declaring bankruptcy and leaving creditors in the lurch."

4. Janan New of the S.F. Apartment Association expressed her organization's support for Option 4, and asked that the Board schedule a Public Hearing on the Rules changes proposed by Commissioner Lightner.

5. Kerrie Evans said that the belief that rent control causes homelessness has been disproved by the Tucker Study, which proved a link between homelessness and good weather.

6. Tenant Charles Brerwirth supported the statements of John Daniels, saying he is also an artist in a storefront, and thought that there was "some security for folks like him."

7. Landlord Jon Bumgarner said that he has a tenant who gave notice and is voluntarily vacating. Mr. Bumgarner said that, economically, he would be better off leaving 2 units empty if he is thinking about selling the building within 4 years.

8. Tenant Larry Roberts lives in a 6-unit building that is for sale. Mr. Roberts told the Board that they should take the needs of the tenant majority in San Francisco into consideration, especially since "this would fail to pass on the ballot."

9. Tenant Yan Qi Guang said that he is facing an Ellis Act eviction and that his attorney is working on a settlement with the landlord. Mr. Guang asked that the Board not pass something that would interfere with his settlement.

10. Tan Chau of the Chinatown Community Development Center said that his organization bought the building at 665 Clay Street in order to preserve affordable housing after Ellis notices had been given by the prior owner. Mr. Chau told the Board that, if Option 1 passed, they would not have been able to buy the building, and suggested Option 3 with 75% of the tenants remaining in place.

11. Gen Fujioka of the Asian Law Caucus told the Board that he represents tenants and "sees lots of Ellis." Mr. Fujioka said that, in some situations, an owner can be convinced to rescind the Ellis filing and keep tenants in place. Option 1 is therefore a problem because of its "inflexibility."

12. Tommi Avicolli Mecca of the Housing Rights Committee sees problems with all of the proposals, and suggested that the Board "come up with a way to make #1 work for tenants." Mr. Avicolli Mecca said that 27% of Ellis evictions impact seniors, and 23% are tenants in the Castro District.

13. Kim Stryker of the Small Property Owners of San Francisco supported Option #4. Ms. Stryker maintained that, since the passage of Proposition 1, Ellis numbers have gone up. She pointed out that many small owners are seniors, are possibly disabled themselves, and it is her belief that excessive regulations are

forcing them to sell their homes. Ms. Stryker suggested that these decisions should be based on the findings of the Housing Study.

14. Tenant Ernestine Weiss said that San Franciscans are supposed to be compassionate, but pointed out that seniors with 10 years of tenancy cannot be evicted in New York. She said that seniors should not be dispossessed.

15. Tenant Philip Brady said that all of the proposals would work against preservation of the housing stock, and that Ellis is a drastic measure which encourages sale of the property rather than keeping units at ridiculously low rents. Mr. Brady suggested that perhaps rent control restrictions are too strict if landlords are taking units off the market.

16. Landlord Patricia Carter said that she should have the right to do what she wants with her property, including no longer being a landlord. Ms. Carter said that new tenants are paying too much because long-standing tenants are paying too little, and said that we should "do away with inflexible laws."

17. Landlord Peter Holden said that landlords are getting away from the original intent of the Ellis Act, and it is now "part of a money-making scheme." Mr. Holden believes that Option #4 provides the most flexibility and said that he supports "affordable", not "cheap", rent.

18. Landlord Kia Eldemir asked what happens if a landlord is on a fixed income. Ms. Eldemir needs to spend \$12,000 on repairs to her building's drainage system, money which she doesn't have, and she says that if she just uses the unit as a sewing room she won't have to deal with it.

19. Steven Shubert is a counselor at the Tenants' Union who says he's "never counseled a landlord who's being evicted." He has, however, counseled "tons" of tenants, especially elderly tenants. Mr. Shubert told the Board that the main purpose of Just Cause grounds for eviction was to prevent evictions in order to increase the rent, but that these proposals would "do just that."

20. Landlord Andrew Long endorsed Option 4. Mr. Long said that the Ellis Act is "not good public policy", but that people resort to it for many reasons. He suggested that, in order to keep units on the market, make it easy to withdraw Ellis notices.

21. Landlord Marina Franco, who is on the Board of the S.F. Apartment Association, supported Option 4. Ms. Franco pointed out that many tenants get "huge payoffs", whereas in other counties they just get a 30-day notice and no compensation.

22. Tenant Chris Slingsby expressed his support for the statements of Mr. Shubert of the Tenants' Union.

23. Tom Ram of the Small Property Owners of San Francisco spoke of a small landlord who is dying of AIDS but can't move downstairs in their building; and another landlord just making expenses by cleaning houses. Mr. Ram suggested that funding for the Housing Study be increased to find out the extent of the problem.

24. Heidi Smith, Tenants' Union counselor, said that losing one's home is one of life's most traumatic events, and that she doesn't know what to tell tenants who ask her if two months' free rent is a "good deal."

25. Cynthia Arnold of Tenants for Home Ownership supported Option #4. Ms. Arnold believes that she should be able to negotiate with her landlord, and that landlords have a right to make a profit. Ms. Arnold contended that the majority of buildings being Ellis'd have long-term low rent paying tenants, and that tenants should be responsible for their own financial security.

26. Norman Rolfe said that he originally had supported Option 1 to "deal with chicanery." He also thinks that Option 4 could have some benefits if a "super-majority" is left. Mr. Rolfe feels that if a landlord no longer wants to be a landlord, they should sell the building and provide life-time leases for seniors as a condition of sale. Mr. Rolfe said that "you can't run over people in the name of property rights."

27. Tenant Robert Sites said that his building was Ellis'd two years ago, but that he is "still fighting." Mr. Sites told the Board they would not be enforcing State law if they allowed landlords to evict and re-rent the property: "if a person stays, the property's not Ellis'd."

28. Tenant Roy Levy told the Board not to adopt any policy that would allow a landlord to profit after an Ellis filing. This would constitute a fraudulent practice under the Civil Code, and they would be an "accessory before the fact."

29. Tenant Todd Curtis thanked the Board for "trying to close the loopholes", but asked that they not adopt Option #4, or he'll be "out of a home." Mr. Curtis has been threatened with an Ellis eviction by the new owner of his building, and said that he "can't work out a deal with landlords who lie."

30. Robert Pender of the Tenants' Network said that he doesn't know much about Ellis, but that tenants have the power of the Referendum, which is the best defense.

31. Tenant Diane Perez-Portello said that she is a single mother with two children. She asked that the Board not allow landlords to raise rents, or she will be out of her home.

32. Tenant Anastasia Yovanopolous said that the Ellis Act is "onerous" and should be final; the landlord "should think twice." Since "many folks have had to leave the City", a landlord should not be able to change their mind when they've "changed peoples' lives."

33. Ted Gullickson of the Tenants' Union said that "this is all about landlords renting at a higher rent", which is prohibited by Ordinance Section 37.9A. Mr. Gullickson told the Board that, legally, they could only adopt Option 1.

34. Tenant Jean Marsh told the Board that she has received "wonderful help" from the Rent Board over the years. After her landlord filed a Writ in her case, Ms. Marsh feels financially and emotionally beaten down. She told the Board that this affects working people as well as the elderly and disabled, and that her landlord was given the building as a gift, for no consideration.

35. Tenant Ted Sevringhouse told the Board not to do anything to "dilute tenants' rights" under Ellis. Mr. Sevringhouse said that many tenants have a "hard time dealing with the stress", and the burden should not be put on tenants to sue for wrongful eviction.

36. Sarah Menio said that "the City belongs to everyone, not just the affluent."

37. Landlord Ida Rachael said that landlords have problems as well, and that tenants should have the government supplement their rent. She said that the Board should try and find a balance, since it "works both ways."

VI. Old Business

A. Ellis Rescission

The Commissioners discussed the four options presented, in conjunction with the testimony they received from the public. Commissioner Marshall expressed her support for Option 1, if some flexibility were built in to address the problem raised by the non-profit housing developers in attendance at the hearing. She also pointed out that it is not true that if a landlord rescinds an Ellis filing, they must "wipe out all of the remaining tenancies – they just have to rent the units at the prior level." Commissioner Lightner expressed her concern that some tenants want to be able to make a deal with their landlord when the only option is an Ellis eviction with no compensation. President Wasserman pointed out that nothing the Board does will ever stop the "bluff" Ellis evictions. Commissioner Gruber stated his view that the Ellis Act is not a "mechanism for bluffing"; a landlord shouldn't be able to "scare someone into making a decision."; and said there is "no half-way." After further discussion, the Board voted as follows below:

MSC: To adopt the following policy regarding Ellis Notices filed with the Rent Board on or after May 2, 2001:

A Notice of Intent to Withdraw Residential Units from the Rental Market may be rescinded only if the owner proves that none of the existing tenancies was terminated as a result of the Ellis filing, or except under extraordinary circumstances approved by the Rent Board. If an owner claims that the recorded constraints have been fully satisfied and are no longer applicable to the property, the owner can submit supporting evidence and request expungement of the Notice of Constraints, and the Rent Board will determine if expungement is warranted. This administrative policy is subject to change by the Rent Board in the future.

(Becker/Marshall: 5-0)

B. Proposed Amendments to Rules Sections 1.21 and 6.15C(3)

At the meeting on March 6th, Commissioner Lightner introduced an amendment that would change the definition of "tenant" by adding Rules Section 1.21 to require that a person permanently occupy a unit as his or her principal place of residence. At the meeting on March 20th, the Board requested an opinion from the Office of the City Attorney as to whether such a change would require an amendment to the Rent Ordinance. Prior to their discussion of this issue, the Board voted as follows below:

MSC: To waive attorney-client privilege as to the April 29th
Memorandum from Deputy City Attorney Marie Blits regarding
changing the definition of "Tenant." (Gruber/Becker: 5-0)

Commissioner Lightner began the discussion by outlining several examples where the current Rules and Regulations expand the Rent Ordinance and stating her opinion that this proposal is not outside of the Board's powers. However, in her Memorandum, Ms. Blits said that such a fundamental change in one of the central terms of the Rent Ordinance would best be effected by amending the Ordinance. Ms. Blits went on to say that the Board might consider addressing part-time occupancy issues by further refining or defining the term "tenant in occupancy" for purposes of the rent increase limitations of Ordinance Section 37.3(a). Commissioner Becker said that Commissioner Lightner's proposal, while "artfully drafted, constituted an ultra virus endeavor. Commissioner Justman expressed his view that there were valid statutory construction reasons for adding a new Section 1.21, defining "Tenant in Occupancy", and offered some suggested language. This issue will be discussed further at the meeting on May 15th.

Commissioner Lightner's other proposal, to add Rules Section 6.15C(3), which would require that a Master Tenant pay a pro-rata share of rent for the unit, will also be discussed at the meeting on May 15th.

VII. Communications

The Commissioners received several items of correspondence concerning the Ellis Rescission issue.

VIII. Director's Report

Senior Administrative Law Judge Tim Lee informed the Commissioners that Judge Garcia has ruled for the landlord in the case of Goodwin vs. Rent Board (Superior Court Case No. 317339). Mr. Goodwin received 7% rent increases based on the increased property taxes incurred by the estate of the prior owner. When he filed for another 7% increase based on the debt service from his purchase of the property, it was denied by the Administrative Law Judge based on Rules Sections 6.10(e) and (a) as constituting "exaggerated results." Judge Garcia found that since there were two separate transfers of the property, two operating expense increases were permissible. A settlement agreement will be brought to the Board for their approval at the meeting on May 15th.

IX. Calendar Items

May 8, 2001 - NO MEETING

May 15, 2001

3 appeal considerations

Old Business: Proposed Amendments to Rules Sections 1.21 & 6.15C(3)

New Business: Goodwin vs. Rent Board (Superior Court Case No. 317339)

X. Adjournment

President Wasserman adjourned the meeting at 10:25 p.m.



April 11, 2001

APR 16 2001

SAN FRANCISCO
PUBLIC LIBRARY**NOTICE OF PUBLIC HEARING****DATE:** May 1, 2001**TIME:** 6:30 P.M.**PLACE:** 25 VAN NESS AVENUE (AT MARKET ST.)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA**THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC
TO COMMENT ON PROPOSED CHANGES TO THE
ADMINISTRATIVE POLICY OF THE RENT BOARD
REGARDING REVOCATION OF A NOTICE OF INTENT TO
WITHDRAW RESIDENTIAL UNITS FROM THE RENTAL
MARKET UNDER THE ELLIS ACT.**

Section 7060.4(a) of the Ellis Act provides that public entities may require the owner to file with the entity a notice of intent to withdraw rental units from the rental market under penalty of perjury, to certify in the notice of intent that eviction notices have been served to terminate existing tenancies, and to record with the county recorder a memorandum summarizing the notice of intent. Withdrawal is effective 120 days from the date of filing of the notice of intent with the public entity unless extended to one year for elderly or disabled tenants. (*Ibid.*) Section 7060.3 further requires the Rent Board to record a Notice of Constraints concerning the withdrawn units, so that the owner must offer any units put back on the rental market first to the displaced tenants, and also must rent the units at the rent-controlled rent.

The Ellis Act is silent as to the ability of an owner to revoke a notice of intent to withdraw once it is filed with the Rent Board. However, Section 7060.7(c) of the Act specifically states that the Act is not intended to "override procedural protections designed to prevent abuse of the right to evict tenants." In the past, the Rent Board allowed an owner to revoke an Ellis notice of intent to withdraw after the effective date of withdrawal only upon a showing that one or more of the existing tenancies was not terminated, but allowed an owner to rescind prior to the effective date of withdrawal without any such showing. If the owner revoked the notice of intent, the Board informed the parties that no just cause existed under the Ellis Act for the termination of any tenancies.

Owners have recently begun to revoke notices of intent after negotiating move-out settlement agreements in which the tenants have waived all rights under the Rent Ordinance and the Ellis Act. The owners thereby avoid the recordation of a

Notice of Constraints under the Act, and eliminate the public's right to re-rental at a controlled rent as well as the right of the displaced tenant to reoccupancy.

The Board is considering changes to the existing administrative policy regarding the circumstances in which revocation of an Ellis filing would be allowed, including the following options:

(Option One) A Notice of Intent to Withdraw Residential Units from the Rental Market may be rescinded only if the owner proves that none of the existing tenancies was terminated as a result of the Ellis filing, i.e. all of the existing tenancies remain in place.

(Option Two) A Notice of Intent to Withdraw Residential Units from the Rental Market may be rescinded if the owner proves that at least one of the existing tenancies was not terminated as a result of the Ellis filing, i.e. one of the existing tenancies remains in place.

(Option Three) A Notice of Intent to Withdraw Residential Units from the Rental Market may be rescinded only if the owner proves that a certain (to be determined) % of the existing tenancies were terminated as a result of the Ellis filing, i.e. X % of the existing tenancies remain in place.

(Option Four) A Notice of Intent to Withdraw Residential Units from the Rental Market may be rescinded if the owner proves that at least one of the existing tenancies was not terminated and all of the existing tenancies that were terminated as a result of the Ellis filing received a fair settlement, i.e. one or more of the existing tenancies remains in place and all other tenancies vacated pursuant to a fair settlement.

You may comment at the public hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department no later than **5 p.m. on Wednesday, April 25th**, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 12 copies of your comments in order facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,

May 15, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 1659 – 10th Ave.

AL010094

The landlord appeals the decision granting a claim of unlawful rent increase, claiming that the Rent Board does not have jurisdiction over the building.

B. 550 Leavenworth St. #2

AT010093

The tenant appeals the dismissal of her petition alleging decreased housing services and the landlord's failure to repair due to her failure to appear at the hearing.

C. 2330 Larkin St. #32

AT010091

The tenant appeals the remand decision denying her claim of financial hardship.

- VI. Communications
- VII. Director's Report
- VIII. Old Business

Proposed Amendments to Rules Sections 1.21 and 6.15C(3)

- IX. Remarks from the Public (cont.)

MAY 11 2001 MAY 5/10/01

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NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

Goodwin v. Rent Board (Superior Court Case No. 317339)

XI. Calendar Items

XII. Adjournment

ACCESSIBLE MEETING POLICY

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

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Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.

MAYOR

SHARON K. WASSERMAN
PRESIDENTJOSEPH GRUBB
EXECUTIVE DIRECTORPOLLY MARSHALL
VICE-PRESIDENTTuesday, May 15, 2001, at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

MAY 30 2001

SAN FRANCISCO
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Vice-President Marshall called the meeting to order at 6:12 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Lightner;
Marshall; Mosser.
Commissioners not Present: Wasserman.
Staff Present: Wolf.

Commissioner Justman appeared on the record at 6:15 p.m.; Commissioner
Murphy arrived at the meeting at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of April 24, 2001, with the following
correction: regarding the case at 887 Bush #509 (AL010034), to
make it clear that the written agreement between the parties
omitted any mention of parking. (Lightner/Gruber: 4-0)

MSC: To approve the Minutes of May 1st, 2001. (Lightner/Becker: 4-0)

IV. Consideration of AppealsA. 1659 - 1661 - 10th Ave.

AL010094

The tenant's petition alleging an unlawful increase in rent from \$750.00 to \$1,200.00 was granted because the Administrative Law Judge found that the first Certificate of Occupancy for the building was issued in 1946, and the landlord had not filed a petition for exemption from the Ordinance due to substantial rehabilitation of the premises. On appeal, the landlord claims that: the conversion of the building from a single family dwelling to a 2-unit building adds rental units to the housing market, and is within the spirit of the new construction exemption; the Administrative Law Judge has confused Certificates of Occupancy with Certificates of Final Completion, and there is no legal authority for concluding that the framers of the Ordinance meant to include Certificates of Final Completion as a basis for precluding exemption; the premises have been substantially rehabilitated as defined in the Ordinance, and there is no requirement in the Ordinance that a landlord obtain certification of substantial rehabilitation exemption; and the landlord's failure to immediately claim exemption does not waive her right to assert such status later.

MSC: To deny the appeal without prejudice to the landlord filing a petition for exemption from the Ordinance pursuant to substantial rehabilitation of the premises. (Becker/Marshall: 5-0)

B. 550 Leavenworth St. #2

AT010093

The tenant's petition alleging decreased housing services and the landlord's failure to repair was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant attributes his confusion as to the date of the hearing to the effects of medication he was taking due to a bout of pneumonia.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Marshall: 5-0)

C. 2330 Larkin St. #32

AT010091

The landlords' separate petitions for rent increases based on increased operating expenses and certification of capital improvement costs were granted. The tenant appealed both decisions on the grounds of financial hardship, which were consolidated on remand. The Administrative Law Judge found that the tenant had significant assets held in trust which could be accessed to meet her needs, and therefore there was not sufficient financial hardship to deny or defer imposition of the rent increases. The tenant appeals the remand decision on the grounds of financial hardship as to the capital improvement passthrough and the operating expense increase. Pursuant to the Moratorium on processing of capital improvement passthroughs, only the appeal as to the operating and maintenance expense increase is currently at issue. In her further appeal, the tenant claims that: CD accounts in her name are actually held jointly with her sister; interest payments attributed as income to her are not actually received; and her expenses are increasing while her income is decreasing.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

V. Communications

In addition to correspondence concerning cases on the calendar, the Board received the following communications:

A. A letter from landlord Barbara Ebel suggesting several ways that the Board could mitigate what she believes to be the damaging effects of Proposition H.

B. A letter from tenant Bruce Ettelson regarding actions allegedly taken by his landlord, Commissioner Bart Murphy, regarding the issue of "principal place of residence."

VI. Director's Report

Deputy Director Wolf informed the Board that the court hearing on the City's Motion for Summary Judgment and to Dissolve the Preliminary Injunction in Quigg vs. City and County of San Francisco, et al., Superior Court Case Number 316928, will be held on May 24, 2001 at 9:30 a.m. in Dept. 302 of Superior Court. The owners' Cross-Motions for Summary Judgment in the case will be heard at the same time. Since the time of the Board meeting, the hearing has been continued until June 4th at the same time and place.

VII. Old Business

Proposed Amendments to Sections 1.21 and 6.15C(3) of the Rules and Regulations

The Board continued their discussion of a proposal by Commissioner Lightner to add Section 1.21 to the Rules and Regulations, which would require that an individual occupy a unit as his or her principal place of residence in order to be covered by the rent increase limitations of the Rent Ordinance. Commissioner Becker suggested, as an alternative, that the Board use the same standard as Costa-Hawkins, which requires that a tenant "permanently reside" in the unit. Commissioner Murphy said that it is more appropriate for the standard to be consistent with that for owner-occupancy eviction, with which Commissioner Justman agreed. Commissioner Lightner's proposed language was amended slightly, and then the Board voted as follows below:

MSC: To put proposed new Rules and Regulations Section 1.21, defining "Tenant in Occupancy", out for Public Hearing.
(Gruber/Lightner: 3-2; Becker, Marshall dissenting)

The proposed new Section follows below:

1.21 Tenant In Occupancy

A tenant in occupancy is an individual who resides in a rental unit as his or her principal place of residence. Occupancy does not require that the individual be physically present in the unit at all times or continuously, but it must be his or her usual place of return. Evidence that a unit is the individual's "principal place of residence" includes, but is not limited to, the following elements, a compilation of which lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding:

- (1) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;
- (2) utilities are billed to and paid by the individual at the subject premises;
- (3) all of the individual's personal possessions have been moved into the subject premises;
- (4) a homeowner's tax exemption for the individual has not been filed for a different property;
- (5) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, or travel necessitated by employment.

The Public Hearing will take place on June 5th at 6:30 p.m. in Room 408 at City Hall.

The Commissioners then discussed proposed new Section 6.15C(3), also put forward by Commissioner Lightner, which would require that a master tenant pay a pro-rata share of rent for the unit. After discussion, Commissioner Lightner agreed that only subtenants and master tenants would be able to file a petition alleging an overcharge or for establishment of the initial rent, and that a landlord could not. Additionally, only the excessive amount being charged would be null and void, and not the entirety of the rent tendered by the subtenant. Staff will finalize the language and consider whether a specific hardship provision needs to be added, and the Board will discuss this issue further at the June 5th meeting.

VIII. Remarks from the Public

Brook Turner of the Coalition for Better Housing urged the Board to put proposed new Sections 1.21 and 6.15C(3) out for Public Hearing.

IX. New Business

Goodwin v. Rent Board (Superior Court Case No. 317339)

This case will be discussed at the meeting on June 5th in Executive Session.

X. Calendar Items

May 22nd and 29th, 2001 - NO MEETINGS

June 5, 2001

6 appeal considerations

Executive Session:

Goodwin vs. Rent Board (Superior Court Case No. 317339)

6:30 Public Hearing: Proposed New Section 1.21, Defining "Tenant in Occupancy"
Old Business: Proposed New Section 6.15C(3), Requiring that a Master
Tenant Pay a Pro-Rata Share of the Rent

XI. Adjournment

Vice-President Marshall adjourned the meeting at 8:00 p.m.



NOTICE OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
June 5, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

CITY HALL, ROOM 408

AGENDA

DOCUMENTS DEPT.

- I. Call to Order
KHIN MAI AUNG
- II. Roll Call
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
- III. Approval of the Minutes
FREDERICK HOBSON
ANTHONY JUSTMAN
- IV. Remarks from the Public
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

MAY 30 2001 fax 5/22/01

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NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations,
members of the public shall be limited to comments of no more
than 3 minutes' duration.

- V. Vote on Whether to Go Into Closed Session Regarding the Case of
Goodwin v. Rent Board (Superior Court Case No. 317339)
(Pursuant to S.F. Administrative Code Section 67.11{a})
- VI. Closed Session re Goodwin, supra
(Pursuant to Government Code Section 54956.9{a})
- VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All
Conversations Held in Closed Session Regarding Goodwin, supra
(Pursuant to S.F. Administrative Code Section 67.11{a})
- VIII. Report on Any Actions Taken in Closed Session Regarding Goodwin,
supra (Pursuant to Government Code Section 54957.1{a}{2} and S.F.
Administrative Code Section 67.14{b}{2})
- IX. Consideration of Appeals
 - A. 1200 Taylor #18 & #4 AT010098 & -99

Two tenants appeal the decision granting rent increases based on
increased operating expenses.
 - B. 1351 - 25th Ave. AL010095

The landlord appeals the decision granting a claim of decreased housing
services due to noise caused by the landlord, who lives in the other unit
in the building.
 - C. 138-146 - 6th St. AL010096

The landlord appeals the decision granting a claim of unlawful rent increase, asserting that the premises are exempt from jurisdiction.

D. 2430 Cabrillo

AT010101

The tenant appeals the denial of a petition alleging decreased housing services.

E. 1369 Hyde St. #65

AL010100

The landlord appeals the decision granting a rent reduction due to the loss of a garage.

F. 265 Fell St. #601

AT010102

The tenant appeals the dismissal of a petition alleging decreased housing services.

X. **Public Hearing**

6:30 Proposed New Section 1.21, Defining "Tenant in Occupancy"

XI. Communications

XII. Director's Report

XIII. Old Business

Proposed New Section 6.15C(3), Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

IV. Remarks from the Public (cont.)

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XIV. New Business

XV. Calendar Items

XVI. Adjournment

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MINUTES OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, June 5, 2001 at 6:00 p.m. at
CITY HALL, ROOM 408

DOCUMENTS DEPT.

JUN 15 2001

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LARRY BEACH BECKER
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FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:15 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Justman;
Lightner; Marshall; Wasserman.
Staff Present: Grubb; Wolf.

Commissioner Mosser appeared on the record at 6:30 p.m.; Commissioner
Murphy arrived at the meeting at 6:36 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of May 15, 2001.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

Mavel Hussan expressed her fear that, were the Board to pass proposed Rules
Section 1.21, tenants would be in danger if they did not sleep in their unit every
night.

V. Consideration of Appeals

A. 1200 Taylor #18 & #4

AT010098 & -99

The landlord's petition for rent increases based on increased operating expenses
and certification of capital improvement costs to 12 of 16 units was granted. The
tenants in two units appeal the decision as to the capital improvement passthrough
and the operating expense increase. Pursuant to the Moratorium on processing of
capital improvement passthroughs, only the appeals as to the operating and
maintenance expense increase are currently at issue. The tenants in unit #18 claim
that: any increases granted should not apply to them because they were served
notice of the hearing under an incorrect name; the landlord was allowed to
supplement the evidentiary record after the hearing with invoices that the tenants did
not have an opportunity to refute; the increase in management fees was not the
result of any increased services to the tenants; and the landlord's out-of-pocket costs
have actually decreased, as have services rendered to the tenants in the building.
The tenants in unit #4 assert that the landlords are not entitled to an increase based
on increased debt service costs pursuant to Rules Section 6.10(g).

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Marshall/Gruber: 5-0)

MSC: To deny both appeals. (Lightner/Gruber: 4-1; Hobson
dissenting)

B. 1351 – 25th Ave.

AL010095

The tenant's petition alleging decreased housing services due to noise emanating from the landlord's unit, which is upstairs from the tenant's unit, was granted. The landlord was found liable in the amount of \$500.00 per month until there is a cessation of the unreasonable noise coming from her unit. On appeal, the landlord claims that: the Administrative Law Judge did not consider her testimony and based his decision on hearsay evidence; the amount granted is excessive; and the Rent Board cannot assess punitive damages.

MSC: To deny the appeal. (Becker/Marshall: 3-2; Gruber, Lightner
dissenting)

C. 138-146 – 6th St.

AL010096

Five tenant petitions alleging unlawful rent increase were granted because the Administrative Law Judge found that the landlord had failed to prove that the subject premises is exempt from Rent Board jurisdiction. On appeal, the landlord asserts that: the premises are exempt because: an oral agreement existed between the landlord and the California Department of Corrections to provide housing to former inmates, and the Department of Corrections is subsidizing some of the tenants' rents; the building has undergone substantial rehabilitation, and there is no requirement in the Rent Ordinance that a landlord file a petition in order to be exempt on these grounds; the Certificate of Final Completion and Occupancy was issued after the effective date of the Ordinance, and the building was vacant prior to that time; and the public policy reason for the exemption, the addition of units to the housing stock, is satisfied by granting exemption in this case.

MSC: To deny the appeal. (Marshall/Becker: 5-0)

D. 2430 Cabrillo

AT010101

The tenant's petition alleging decreased housing services was denied. The tenant's claim was that, pursuant to a 1997 Conciliation Agreement, the landlord fails to expend one full hour per week on common area maintenance and the premises are therefore in an unsatisfactory condition. On appeal, the tenant asserts that: the Administrative Law Judge exhibited bias on behalf of the landlord; the landlord's attorney harassed him at the hearing; the Administrative Law Judge tried to pressure him into mediating the case, and failed to allow him time for cross-examination; and he proved his case through pictures, letters and a credible witness.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

E. 1369 Hyde St. #65

AL010100

The tenant's petition alleging decreased housing services due to the removal of garage space in the building was granted and the landlord was found liable to the

tenant in the amount of \$300 per month, the current fair market value of the parking space. On appeal, the landlord contends that: the tenant should not be granted a rent reduction upon removal of the housing service that is greater than the amount they were paying for the service; the reasons for the withdrawal of the service are irrelevant to the valuation of that service; the value of the garage originally constituted 13% of the tenant's total rent obligation, but the valuation determined by the Administrative Law Judge constitutes 21% of the total rent; and, since market value was neither demanded nor paid for the service, it should not be the amount granted for the rent reduction.

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Murphy/Lightner: 5-0)

MSF: To deny the appeal. (Becker/Marshall: 2-3; Gruber, Justman, Murphy dissenting)

MSC: To accept the appeal and remand the case for a hearing to put in evidence regarding the intended use of the parking space and to consider the landlord's credibility regarding the long-term use of the space. (Justman/Gruber: 3-2; Becker, Marshall dissenting)

F. 265 Fell St. #601

AT010102

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant provides evidence that he was ill on the day of the hearing.

MSC: To accept the appeal and remand the case for a new hearing. (Becker/Lightner: 5-0)

VI. Public Hearing

At 6:56 p.m., the Board commenced a Public Hearing on proposed new Section 1.21, which would require that an individual occupy a unit as his or her principal place of residence in order to be covered by the rent increase limitations of the Rent Ordinance. 35 individuals testified as follows below:

1. Mavel Hussan told the Board that the proposal doesn't make sense, and constitutes "attempted repression just short of martial law."

2. Brook Turner, Executive Director of the Coalition for Better Housing, said that his organization strongly supports the proposed regulation. Mr. Turner read from a description of the proposal posted on the Tenants' Union web site, which he said constitutes "vilification and mis-truth." According to Mr. Turner, in a poll taken one year ago, 70% of San Francisco tenants said that they do not approve of rent controlled apartments being used as second homes.

3. Landlord attorney David Wasserman told the Board that, in Manhattan, there are "tons" of apartments that "folks can't afford to give up" because the rents are so low. Mr. Wasserman said that the supply of housing is being held hostage to non-use and, that if the supply were to increase, rents would go down.

4. Landlord Gary Briggs told the Board of three situations that he feels warrant the proposed legislative solution: 1) an individual with a home in Sonoma, who

comes to the City 3 times a week to run his business; 2) the Spreckles Mansion, which was being used by peninsula residents for cultural forays into San Francisco; and 3) New York City. Mr. Briggs said that it is "better late than never."

5. Landlord Andrew Long supports the proposal because "if you're wealthy enough to have two homes, you're wealthy enough to pay market rent." Mr. Long cited the SPUR Study that estimates that 7,000 rental units are currently being held off the market.

6. Landlord Peter Euteneuer said that, of his 47 rental units, 4% or 2 units fall within the category that would be affected by the proposed regulation. If the same holds true for most landlords, Mr. Euteneuer believes that a great number of units will come back on the market. He also said that the transient use of apartments results in higher costs to be borne by long-term tenants.

7. Tommi Avicolli Mecca of the Housing Rights Committee wondered what the term "normally returns to" means, and asked how it will be interpreted. For example, if he has to go to Philadelphia to care for his sick sister, will he lose his rent control protections, and will his landlord have to be a spy? Mr. Avicolli Mecca believes that tenants are treated as "second class citizens" because they cannot afford to buy their homes.

8. Anthony Schultz supports the proposal in order to free up units, but said that is "has to work for both sides."

9. Norman Rolfe said the regulation should be sent back for clarification; that pied a terres are rare; that unscrupulous landlords will try and use this to evict; and that there are "questionable statistics" in the SPUR Report.

10. Landlord Kira Eldemir said that the Rent Board's Rules and Regulations have made her rental agreement with her tenant "null and void." Ms. Eldemir has one tenant who is an oral surgeon who spends one and one-half days per week in San Francisco. She asked if this individual needs protection and if she should be asked to subsidize him or her?

11. Steven Shubert is opposed because he believes that the proposal provides an incentive to show that tenants are no longer primary residents of their units. He does not believe that if someone has to care for an ill parent, they should have to worry about rent control protection.

12. Landlord Karen Crommie said that the draft proposal has been worked on, and represents a "reasonable compromise." She urged approval.

13. Tenant Michael Barrett voiced his opposition based on "unsubstantiated statistics and speculation." Mr. Barrett said that Manhattan is a "totally different situation."

14. Landlord Naomi Richen said that the Rent Ordinance is supposed to expand the supply of affordable housing, and that she "can't imagine how anyone is opposed."

15. Tenant Alice Kostin expressed her fear that low and moderate income tenants could lose their homes if they had to take care of a sick relative over a long period of time, or if they were ill and had to return to their parents' home, since the

proposal doesn't apply only to individuals with two homes. Ms. Kostin believes that non-English speaking tenants are at a serious disadvantage at hearings.

16. Janan New, Director of the S.F. Apartment Association, said that "rich people don't need rent control" and that the proposal plugs a loophole that has been abused for far too long. Ms. New believes that increased supply will result in lower rents in the long term.

17. Small landlord Marina Franco said that she experiences very little turnover in her building and that it is disheartening for the other tenants when someone doesn't actually live in their unit. A "revolving hotel" for some tenants' friends results in a "lower quality of life" for everyone in the building.

18. Landlord Donald Gibbs said that the proposed regulation is well written and that he supports it. Mr. Gibbs explained that one of his tenants will be going into a nursing home, and the unit will be used merely as storage. Mr. Gibbs feels that, at some point, that unit should return to the market.

19. Landlord Tom Garber supports the proposal and cited two anecdotes from his experience: a tenant who moved to Pennsylvania over two years ago and returns to San Francisco only 7-10 days per year to visit friends; and his cousin, who moved to St. Helena 15 years ago, but comes in to the City once a month to go to dinner or a play.

20. Landlord Bob Mayer supports the proposed regulation because "housing should be for San Francisco residents who need it."

21. Landlord Peter Holden expressed conflicting feelings because he has a friend who moved to New Jersey but keeps a \$750 unit to conduct business in San Francisco a few times a year; Mr. Holden said he doesn't want to be the reason this individual is kicked out of his apartment. Mr. Holden also said that the proposal is "too fair, and too reasonable", so the Board "better not do it."

22. Landlord Peter Hadiaris is also an attorney who represents tenants, and who is in favor of the proposal because "pied a terres are taking units off the market." Mr. Hadiaris believes that working class tenants have more to gain by freeing up housing.

23. Tenant Sandra Finnegan spoke against the proposal because of there being no implementation process. She asked under what circumstances her landlord could make her prove that her unit was her principal place of residence, and said that a landlord should have to have "Just Cause" before being able to invade her privacy.

24. Landlord Paul Johns said that the proposed regulation is "far overdue", and cited the examples of doctors working for Kaiser who have apartments in the City but live elsewhere.

25. Landlord Sam Hunt said that he rents to a tenant who lives in Thailand and sublets his unit; the tenant is only in San Francisco two weeks out of the year.

26. Susan Kellerman said that the proposed regulation is an "obvious way to get more units" and urged support.

27. Tenant Gilbert Herrera, the appellant in the case at 265 Fell #601 (AT010102), told the Board that he has cancer and HIV and was too ill to call on the day of his hearing.

28. Cynthia Arnold of Tenants for Home Ownership supports this "common sense housing policy." Ms. Arnold took care of her ill mother for 5 months and experienced no problems with her landlord, and said that tenants who travel produce less wear and tear on their units.

29. Tenant Roberta Callahan said that the proposal "opens a can of worms" and will lead to snooping by landlords over an "exaggerated problem." Ms. Callahan believes that it is "part of the game" if a tenant rents an apartment and then goes somewhere else, and that a landlord "doesn't get market for every unit."

30. Small landlord Nancy Tucker said that she was "more excited" than she had been at any other Public Hearing of the Board, because the discussion was about adding to the housing stock. Ms. Tucker knows of two units being used as offices, and of situations where tenants have offered to "sell back their units" for a sum.

31. Tenant George Buffington said that "landlords arguing for more units is like the fox arguing on behalf of chicken coops", and expressed concerns regarding enforcement.

32. Landlord Bill Quan supports the proposal and said that peoples' concerns will be addressed in a hearing.

33. Property Manager Dan Michael is also a tenant who supports the proposal, because he "sees the abuses."

34. Small landlord David Ferguson said that the pendulum has swung too far on the side of tenants, and that small landlords are being abused. Mr. Ferguson said that he was a Socialist in college but, "you've gotta grow up."

35. Michelle Horneff, President of the Professional Property Management Association, said that her organization supports the proposal. Ms. Horneff read from a letter in which the tenants, who live in England, admit that their unit is being used as storage for their wedding presents.

Upon the conclusion of the Public Hearing at 8:00, the Commissioners discussed the proposed regulation. Commissioner Hobson suggested that the Board eliminate voter registration because it is a meaningless criteria; he also told the Board that, when taking care of his sick mother, he had to come back to his apartment once a month in the face of his landlord's allegations that he was no longer living there. Commissioner Marshall raised a concern that many owners will give notice of a rent increase on this ground, knowing that many tenants will simply pay the increase or move, whether or not the increase is warranted. She suggested that the landlord should have to file a petition prior to giving the notice of rent increase; if approved, the increase would be retroactively effective as of the effective date of the landlord's notice. Commissioners Lightner and Murphy expressed concerns that there is a due process problem with requiring that a landlord "ask permission first", since there is no discovery mechanism in the Rent Ordinance. Commissioner Wasserman referred the Board to Part 5 of the Rules and Regulations, which provides that a landlord must petition for a hearing if they seek to impose a rent increase in excess of limitations. The landlord would first have to make a prima facie case that the tenant

was not a "Tenant in Occupancy" pursuant to the new regulation, and then the burden would shift to the tenant to prove that he or she used the premises as their principal place of residence.

Commissioner Becker was concerned regarding "ambiguities" in the language regarding which situations would be covered by the proposed language, and in which temporary circumstances tenants would still retain their rent control protections. Commissioner Justman indicated that he wanted to ensure that the regulation affected the situations the Board wanted to target, and he was willing to entertain suggestions to make clear what was covered and what was not. Commissioner Lightner crafted specific language to address Commissioner Becker's concerns, which was agreeable to Commissioner Justman. The Board did not specify how long a tenant could go away to school and still be considered a "Tenant in Occupancy." While Commissioner Justman said that he did not have a problem with someone leaving for up to two years to further their education, "if it gets up to six, it becomes a problem." These questions will be decided on a case-by-case basis. Commissioner Marshall was also concerned that the Board not "inadvertently amend Rules and Regulations Section 6.14." The Commissioners agreed that nothing in the new regulation would affect co-tenants or approved sub-tenants who had not been given 6.14 notices or who were not subject to a Costa-Hawkins increase. Therefore, if any tenant who meets the Rent Ordinance definition of tenant resides in the unit as their principal place of residence, including co-tenants and approved subtenants, an unlimited rent increase would not be approved pursuant to this regulation.

With the addition of the requirement that a landlord petition for a rent increase on this basis, and the additional language referenced above, the Board passed the proposed regulation pursuant to the below motion:

MSC: To pass new Rules and Regulations Section 1.21, defining "Tenant in Occupancy", as amended, to be effective immediately. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

The new Section, which pertains to rent increase limitations only, and does not remove the requirement that there be "Just Cause" for eviction, reads as follows below:

Section 1.21 Tenant In Occupancy

A tenant in occupancy is an individual who otherwise meets the definition of tenant as set forth in Ordinance Section 37.2(t), and who resides in a rental unit as his or her principal place of residence. Occupancy does not require that the individual be physically present in the unit at all times or continuously, but it must be his or her usual place of return. Evidence that a unit is the individual's "principal place of residence" includes, but is not limited to, the following elements, a compilation of which lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding:

(1) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;

(2) utilities are billed to and paid by the individual at the subject premises;

(3) all of the individual's personal possessions have been moved into the subject premises;

(4) a homeowner's tax exemption for the individual has not been filed for a different property;

(5) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence.

Section 5.10 Who must file

Landlords who seek to impose rent increases which exceed the rent increase limitations set forth in Section 4 above, must petition for an arbitration hearing. Landlords who seek a determination that a tenant is not a tenant in occupancy pursuant to Section 1.21 above must petition for an arbitration hearing prior to issuing a notice of rent increase on such grounds. Any petition seeking a determination that a tenant is not a tenant in occupancy shall be expedited.

VII. Communications

In addition to correspondence regarding the subject of the Public Hearing and cases on the appeals calendar, the Commissioners received the following communications:

A. Office workload statistics for the month of April, 2001.

B. A current list of Rent Ordinance amendments.

C. The annual report to the Board of Supervisors on the number of eviction notices filed with the Department.

VIII. Director's Report

The Board welcomed back Executive Director Joe Grubb. Deputy Director Delene Wolf informed the Commissioners that the hearing in the case of Quigg v. S.F. Rent Board has been continued until June 13th at 9:30 a.m. in Dept. 302 of Superior Court.

IX. Old Business

A. Goodwin v. Rent Board (Superior Court Case No. 317339)

The Deputy Director informed the Board that Judge Garcia granted the landlord's Writ on April 30, 2001. While the Judge did not specifically order that the Board grant the landlord 7% rent increases based on increased operating expenses, the only basis for disallowing the increases was found not to be warranted by the Judge. In order that the landlord not pursue a constitutional challenge to the 7% limitation on operating and maintenance expense increases, the Board passed the below motion:

MSC: Pursuant to the Court Order in Superior Court Case No. 317339, to remand the case on the record to the Administrative Law Judge to grant the landlord's petition for 7% rent increases based on increased operating expenses. (Gruber/Lightner: 5-0)

B. Proposed New Rules Section 6.15C(3), Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

Discussion of this proposal was continued to the June 19th meeting.

X. Calendar Items

June 12, 2001 - NO MEETING

June 19, 2001

6 appeal considerations

Executive Session:

Larsen v. Rent Board (Superior Court Case No. 319390)

Old Business: Proposed New Rules Section 6.15C(3)

Pursuant to Rules Section 2.18, and due to the July 4th Holiday, the Board voted as follows below:

MSC: To waive Rules and Regulations Section 2.13(a) and not schedule a Board meeting on the 1st Tuesday in July, which is July 3rd. The first meeting of the Board in July shall be on July 10th.
(Gruber/Justman: 5-0)

XI. Adjournment

President Wasserman adjourned the meeting at 10:00 p.m.

DOCUMENTS DEPT.

MAY 22 2001

WILLIE L. BROWN, JR.
MAYORSAN FRANCISCO May 18, 2001
PUBLIC LIBRARYJOSEPH GRUBB
EXECUTIVE DIRECTORNOTICE OF PUBLIC HEARING

DATE: JUNE 5, 2001
TIME: 6:30 P.M.
PLACE: CITY HALL
 ROOM 408
 SAN FRANCISCO, CALIFORNIA

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON PROPOSED NEW SECTION 1.21, BELOW, WHICH DEFINES "TENANTS IN OCCUPANCY." THE INTENT OF THE NEW SECTION IS TO LIMIT RENT ORDINANCE JURISDICTION TO PRINCIPAL PLACES OF RESIDENCE.

1.21 Tenant In Occupancy

A tenant in occupancy is an individual who resides in a rental unit as his or her principal place of residence. Occupancy does not require that the individual be physically present in the unit at all times or continuously, but it must be his or her usual place of return. Evidence that a unit is the individual's "principal place of residence" includes, but is not limited to, the following elements, a compilation of which lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding:

(1) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;

(2) utilities are billed to and paid by the individual at the subject premises;

SHARON K. WASSERMAN
PRESIDENTPOLLY MARSHALL
VICE-PRESIDENTKHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

PAGE 2
NOTICE OF PUBLIC HEARING, SECTION 1.21

(3) all of the individual's personal possessions have been moved into the subject premises;

(4) a homeowner's tax exemption for the individual has not been filed for a different property;

(5) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, or travel necessitated by employment.

You may either comment at the public hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department no later than **5 p.m. on Wednesday, May 30, 2001**, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 12 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.



NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
June 19, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

25 Van Ness Avenue, #70, Lower Level

POLLY MARSHALL
VICE-PRESIDENT

AGENDA

DOCUMENTS DEPT.

9/01

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

JUN 15 2001

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NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Vote on Whether to Go Into Closed Session Regarding the Case of Larsen v. Rent Board (Superior Court Case No. 319390) (Pursuant to S.F. Administrative Code Section 67.11{a})
- VI. Closed Session re Larsen, supra (Pursuant to Government Code Section 54956.9{a})
- VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Larsen, supra (Pursuant to S.F. Administrative Code Section 67.11{a})
- VIII. Report on Any Actions Taken in Closed Session Regarding Larsen, supra (Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14{b}{2})
- IX. Consideration of Appeals

A. 110 Portola Dr. #2

AL010103

The landlord appeals the decision granting a claim of decreased housing services.

B. 145 Central Ave.

AL010104

The landlord appeals the decision granting claims of decreased housing services.

C. 3340 - 18th St.

AT010106

The tenants appeal the decision granting a rent increase based on comparable rents.

D. 2440 Bayshore Blvd. #Two

AL010107

The landlord appeals the decision granting a rent reduction due to the loss of use of a parking space.

E. 478 Warren Dr. #720

AT010108

The tenant appeals the decision denying his petition alleging decreased housing services due to a barking dog in the building.

F. 2789 Golden Gate

AL010109

The landlord appeals the decision partially granting claims of decreased housing services and unlawful rent increase.

X. Communications

XI. Director's Report

XII. Old Business

Proposed New Section 6.15C(3), Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

XIII. New Business

XIV. Calendar Items

XV. Adjournment

ACCESSIBLE MEETING POLICY

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

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There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



SHARON K. WASSERMAN
PRESIDENT

9/01
POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, June 19, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

JUL 02 2001

Vice-President Marshall called the meeting to order at 6:16 p.m.

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II. Roll Call

Commissioners Present:

Aung; Gruber; Hobson; Justman; Lightner;
Marshall; Murphy.

Commissioners not Present:

Becker; Mosser; Wasserman.

Staff Present:

Grubb; Lee; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of June 5, 2001 with the following addition: to add to Commissioner Hobson's remarks upon the conclusion of the Public Hearing that he recommended exempting reasonable absences caused by education, an ill family member, or employment.
(Gruber/Justman: 5-0)

IV. Vote on Whether to Go Into Closed Session Regarding the Case of Larsen v. Rent Board (Superior Court Case No. 319390) Pursuant to S.F. Administrative Code Section 67.11{a}

MSC: To go into Closed Session. (Hobson/Justman: 5-0)

V. Closed Session re Larsen, supra, Pursuant to Government Code Section 54956.9{a}

The Board went into Closed Session from 6:20 to 6:55 p.m. with Deputy City Attorney Marty Greenman to discuss the case of Larsen v. Rent Board (Superior Court Case No. 319390).

VI. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Larsen, supra.

MSC: To disclose that the Board has entered into a settlement of the Larsen litigation, and to inform the public as to amended administrative procedures that will be followed pursuant to Ellis filings. (Lightner/Gruber: 5-0)

VII. Report on Any Actions Taken in Closed Session Regarding Larsen, supra, Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14(b){2}

Vice-President Marshall reported that the Board held a Closed Session to discuss the Larsen case with its attorney, and approved a settlement of that litigation. Additionally, the Board's administrative procedures pertaining to Ellis filings were amended so that Step 7 now reads as follows: "Prior to the effective date of withdrawal, owner records the Memorandum summarizing Notice of Intent with County Recorder. A tenant may assert the owner's failure to record a memorandum as a defense to an eviction action. The Rent Board will record a Notice of Constraints (Step 10) notwithstanding the owner's failure to record the Memorandum."

VIII. Consideration of Appeals

A. 110 Portola Dr. #2

AL010103

The tenant's petition alleging decreased housing services due to removal of the right to have an extra front door key was granted, and the landlord was found liable in the amount of \$315.00, or \$70.00 per month. On appeal, the landlord claims that: there was no decrease in housing services, since security is not defined as a housing service; increased security constitutes an increase in housing services, rather than a decrease; the tenant failed to prove the need for an extra key; there is no authority for granting a rent reduction larger than the amount requested by the tenant; the amount granted was arbitrary and capricious; the Administrative Law Judge exhibited bias against the landlord; and the landlord has a right to establish security criteria for the building, which is of more importance than one tenant's convenience.

MSC: To recuse Commissioner Gruber from consideration of this appeal.
(Lightner/Justman: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to adjust the amount of the rent reduction granted to an amount no greater than that requested in the tenant's petition; the appeal is denied as to all other issues.
(Hobson/Marshall: 3-1; Lightner dissenting)

B. 145 Central Ave.

AL010104

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$725.00 due to the condition of a closet ceiling and leaking refrigerator. On appeal, the landlord claims that the tenants failed to provide him access in order to inspect the unit and effectuate any necessary repairs; and that the tenants have exhibited racial bias against him.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to: disallow the rent reduction for the refrigerator because it was not reported by the tenants to the Department of Building Inspection and therefore was not substantial; disallow any other rent reductions during the period the landlord's access to the unit was only allowed with a police escort; and re-visit the issue of the closet and determine if the condition

constituted a substantial decrease in housing services.
(Gruber/Lightner: 5-0)

C. 3340 – 18th St.

AT010106

The landlords' petition for a rent increase based on comparable rents was granted, and a rent increase from \$650.00 to \$1,023.44 was approved. On appeal, the tenants assert that: the rent for the unit was not as high in 1996 as the appraiser estimated it to be at the hearing; the apartment is not a two-bedroom unit, rather, the dining room is being used as a bedroom; the tenants' evidence was not given sufficient weight; and the subject unit is not in good condition.

MSC: To deny the appeal. (Gruber/Lightner: 4-1; Hobson dissenting)

D. 2440 Bayshore Blvd. #2

AL010107

The tenants' petition alleging decreased housing services due to the loss of use of a parking space was granted and the landlords were found liable in the amount of \$562.50, or \$75.00 per month. On appeal, the landlords claim that the tenants had not parked their car at the building but, rather, in a space belonging to a neighboring building.

MSC: To recuse Commissioner Aung from consideration of this appeal.
(Marshall/Lightner: 5-0)

MSC: To deny the appeal. (Hobson/Marshall: 4-1; Lightner dissenting)

E. 478 Warren Dr. #720

AT010108

The tenant's petition alleging decreased housing services due to noise from a downstairs neighbor's dog was denied because the Administrative Law Judge found that the landlord made numerous, reasonable, timely and ultimately successful efforts to resolve the tenant's complaint. The tenant appeals, claiming that: the Administrative Law Judge exhibited bias against the tenant; the conclusion that the landlord made reasonable attempts to resolve the problem contradicts sworn, taped testimony at the hearing; the tenant was ill on the day of the hearing, and not functioning at a high level; there are numerous dangerous dogs on the premises; and there are many factual errors in the decision.

MSC: To deny the appeal. (Gruber/Hobson: 5-0)

F. 278A Golden Gate

AL010109

The landlords' appeal was filed one day late because the landlords' attorney alleges that instructions he gave to his staff were not carried out.

MSC: To find good cause for the late filing of the appeal.
(Gruber/Hobson: 5-0)

The tenant's petition alleging decreased housing services and unlawful rent increase was granted, in part, and the landlords were found liable to the tenant in the amount of \$5,330.79 due to unlawful rent increases and \$50.00 per month due to a non-working fireplace. The landlords appeal, asserting that: the unlawful rent increases were only minimally excessive; the tenant was advised to seek advice from the

Rent Board concerning the increases and this claim should therefore be barred by the doctrines of laches and estoppel; the alleged increase in February, 1999 actually took effect in March, 1999 and was lawful; the tenant's initial base rent did not include a working fireplace; and the amount granted for the fireplace is excessive, especially considering the fact that the tenant did not even attempt to use the fireplace for six months after moving in to the unit.

MSC: To accept the appeal and remand the case for a hearing on the rent history and to make findings as to whether the fireplace was offered as a housing service at the commencement of the tenancy. (Justman/Marshall: 5-0)

IX. Communications

The Commissioners received communications concerning cases on the calendar.

X. Old Business

Proposed New Section 6.15C(3), Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

This proposal will be discussed at the meeting on July 10th. The Executive Director will explore the possibility of obtaining a room in City Hall for a Public Hearing on August 21st.

XI. Remarks from the Public

Karen Crommie expressed her disappointment that proposed Rules Section 6.15C(3) was not going to be discussed at the meeting, and asked that the Board "take the profit motive out of subletting." Len Pink said that he also came to hear the discussion of 6.15C(3) and supports passage.

XII. New Business

A. Commissioner Lightner brought up a request by Supervisor Gonzales that the Office of the City Attorney draft legislation that would restrict the Board's rule-making powers, and asked that the Commissioners unanimously oppose such a proposal. This issue will be put on the calendar for discussion at the next meeting.

B. Commissioner Hobson distributed letters to Supervisor Chris Daly objecting to a proposal that would take away the permitting of late night clubs from the Police Department, and asked for the Board's support.

XIII. Calendar Items

June 26 & July 3, 2001 - NO MEETINGS

July 10, 2001

3 appeal considerations

Old Business:

Proposed New Section 6.15C(3), Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

New Business:

A. Litigation Update

B. Rule-Making Authority of the Rent Board Commissioners

XIV. Adjournment

Vice-President Marshall adjourned the meeting at 8:06 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN

PRESIDENT

POLLY MARSHALL

VICE-PRESIDENT

Tuesday, 6:00 p.m.,

July 10, 2001

25 Van Ness Avenue, #70, Lower Level

JOSEPH GRUBB

EXECUTIVE DIRECTOR

AGENDA

DOCUMENTS DEPT.

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

JUL 02 2001

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**NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations,
members of the public shall be limited to comments of no more
than 3 minutes' duration.**

V. Consideration of Appeals

A. 1800 - 1806 - 16th Ave. AL010111

The landlord appeals the decision granting rent increases based on rents for comparable units.

B. 1801 Gough #302 AT010112

The tenant appeals the decision denying her claims of decreased housing services.

C. 970 Chesnut #3 AL010113

The landlord appeals the decision granting a claim of unlawful rent increase.

D. 1000 Howard #305 AT010115

The tenant appeals the decision partially granting claims of decreased housing services.

E. 1476 - 26th Ave. AT010116

The tenant appeals the decision determining that the Rent Board has no jurisdiction over this single family dwelling pursuant to Costa-Hawkins.

VI. Communications

VII. Director's Report

VIII. Old Business

Proposed New Section 6.15C(3), Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

A. Litigation Update

B. Rule-Making Authority of the Rent Board Commissioners

XI. Calendar Items

XII. Adjournment

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Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, July 10, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 320

DOCUMENTS DEPT.

JUL 17 2001

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PUBLIC LIBRARY

SHARON K. WASSERMAN
PRESIDENT
0/01
POLLY MARSHALL
VICE-PRESIDENT

I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Aung; Gruber; Hobson; Lightner; Mosser;
Wasserman.
Commissioners not Present: Becker; Justman; Murphy.
Staff Present: Grubb; Lee; Wolf.

Commissioner Marshall appeared on the record at 6:25 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of June 19, 2001 with a correction to
reflect that Senior Administrative Law Judge Tim Lee was not at
the meeting. (Lightner/Gruber: 5-0)

IV. Remarks from the Public

A. Landlord Walter Hoffman objected to the 3-minute limitation on public
comments. He told the Board that he believes that Rent Board staff gives incorrect
advice to tenants, because one of his tenants failed to pay rent and had to be
evicted by the Sheriff. Mr. Hoffman also said "This is not Munich."

B. Tenant Karen Freeman, appellee in the case at 1800-1806 - 16th Ave.
(AL010111), informed the Board that her attorney, Mr. John Lauricella, could not
attend the meeting. She also said that Commissioner Lightner was present the last
time this case was discussed, and she is an "interested party."

C. Tenant Sharon Costanzo, appellant in the case at 1476 - 26th Ave.
(AT010116), said that the landlords have been trying to evict her for the past year
and that they are now trying to use Costa-Hawkins to raise the rent so that she will
be unable to continue residing at the premises.

D. Landlord Lisa Ng, appellee in the 1476 - 26th Ave. case (AT010116), said
that Sharon Costanzo was not telling the truth. According to Ms. Ng, Ms. Costanzo
had moved out last June and sublet the premises, and the landlords asked for the
property back since they believed that she no longer lived there.

E. Kate Hague, the daughter of tenant Sharon Costanzo, said that the Board's informational materials concerning Costa-Hawkins state that if there is an in-law unit, whether legal or illegal, a single-family dwelling is considered a two-unit building. The information does not make any distinction if it is the tenant, rather than the landlord, who is renting out the second unit. She asked that the information be clarified as to any exceptions to this rule.

V. Consideration of Appeals

A. 1800-1806 – 16th Ave.

AL010111

The landlord's petition for rent increases to the tenants in two units was partially granted only as to one unit (1804). It was found that the rent paid by the tenant in unit 1806 was only slightly less than that for other comparable units, and therefore no additional increase was warranted. Both tenants are the children and two of four beneficiaries of the deceased prior owner; the tenant in unit 1804 had been living in the building rent-free. The landlord appeals, asserting that: the tenant in unit 1806 moved in to that unit upon her own initiative and not pursuant to any request from the landlord, so there was a new rather than a continuing tenancy; Rules Section 6.11(a)(3) requires that the length of occupancy of the subject unit be considered, and not the length of time the tenant has lived in the building; the tenant in unit 1806 has lived in the building for 9 fewer years than the tenant in unit 1804, but her rent is a lesser amount; evidence was presented at the hearing to show that the initial rent for unit 1806 was far less than market; "perfect comparability" was required by the Administrative Law Judge, which is contrary to the language of the Regulation; improvements made to unit 1806 should be taken into account; and the subject tenants should not reap more benefits than their siblings by having life-time rent controlled leases in addition to receiving their share of the sale proceeds of the building.

MSC: To recuse Commissioner Lightner from consideration of this case.
(Gruber/Lightner: 5-0)

Because the parties did not timely receive the Memorandum prepared by the Administrative Law Judge, consideration of this case was continued to the August 7th meeting.

B. 1801 Gough #302

AT010112

The tenant's petition alleging several decreased housing services was denied because the Administrative Law Judge found that the tenant had failed to meet her burden of proof. On appeal, the tenant claims that: her evidence was not taken into consideration; the landlord's witness has only recently taken over management of the building; and her stove and shower do not work.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

C. 970 Chesnut #3

AL010113

The tenant's petition alleging an unlawful increase in rent from \$1,348.56 to \$3,500.00 per month was granted, because the Administrative Law Judge found that no rent increase was warranted pursuant to Costa-Hawkins or Rules Section 6.14. Although the tenant and his wife purchased a home in Corte Madera, the tenant resides in the Chesnut Street rental unit during the week and proved that he

had not vacated. Additionally, the landlord was found liable to the tenant in the amount of \$3,820.53 due to an unlawful rent increase in 1989. On appeal, the landlord maintains that: the 1989 rent increase was an approved capital improvement passthrough and, therefore, should not have been determined to be null and void; the rent rollback is barred by the doctrine of laches; the Decision omits necessary findings regarding the tenant's principal place of residence; the tenant failed to meet his burden of proof, because his evidence pre-dates the purchase of the home in Marin County; and the landlord has no way to disprove the tenant's contentions regarding his personal circumstances.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record on the issue of the rent history; a hearing will be held only if necessary. The appeal is denied as to all other issues without prejudice to the landlord filing a petition seeking a determination as to whether the tenant is a "Tenant in Occupancy" pursuant to new Rules and Regulations Section 1.21.
(Lightner/Gruber: 4-1; Hobson dissenting)

D. 1000 Howard #305

AT010115

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,375.00 due to a faulty fire exit door and lack of building cleanliness. The tenant appeals, claiming that the amounts granted are inadequate, considering the nature of the conditions.

After discussion, the Board requested that the Administrative Law Judge prepare a Memorandum explaining how he arrived at the amount of the rent reductions and continued this case to the next meeting.

E. 1476 – 26th Ave.

AT010116

The landlord filed a petition seeking a determination of whether the subject property is exempt as a single family dwelling pursuant to Costa-Hawkins. The Administrative Law Judge found that, since it was the tenant who changed the use of the premises by renting out the first floor, the structure remained a single family dwelling separately alienable from any other dwelling unit and therefore exempt from the rent increase limitations of the Ordinance. The tenant appeals, asserting that: the in-law unit on the property is a fully habitable unit, which meets the definition of a second unit under the California Government Code; the landlords knew that both units in the building would be used as living space at the time the lease was signed; the use of the building should determine its status; the landlords are currently attempting to alter the status of the in-law unit by obtaining a permit to remove the stove and doorbell; and the proposed rent increase constitutes an "economic eviction."

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Hobson, Marshall dissenting)

VI. Old Business

Proposed New Section 6.15C(3), Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

The Board continued their discussion of a proposal by Commissioner Lightner that would require that master tenants pay an equitable portion of the rent for the unit. Commissioner Marshall wanted to be sure that, in establishment of the initial base rent, additional amounts paid for utilities could be accounted for. With two minor amendments to the language, the Board voted as follows:

MSC: To put proposed new Rules and Regulations Section 6.15C(3), as amended, out for Public Hearing. (Lightner/Gruber: 5-0)

The Public Hearing will be held on August 21st at 6:00 p.m. in Room 406 at City Hall. The proposed language reads as follows:

Section 6.15C(3):

Partial Sublets. In the event a master tenant does not sublease the entire rental unit, as anticipated in Section 37.3 (c), then the master tenant may charge the subtenant(s) no more than the subtenant(s) proportional share of the total current rent paid to the landlord by the master tenant for the housing and housing services to which the subtenant is entitled under the sub-lease.

- (a) The allowable proportional share of total rent may be calculated based upon the square footage shared with and occupied exclusively by the subtenant; or an amount substantially proportional to the space occupied by and shared with the subtenant (e.g. three persons splitting the entire rent in thirds) or any other method that allocates the rent such that the subtenant pays no more to the master tenant than the master tenant pays to the landlord for the housing and housing services to which the subtenant is entitled under the sublease. In establishing the proper initial base rent, additional housing services (such as utilities) provided by, or any special obligations of, the master tenant, or evidence of the relative amenities or value of rooms, may be considered by the parties or the Rent Board when deemed appropriate. Any methodology that shifts the rental burden such that the subtenant(s) pays substantially more than their square footage portion, or substantially more than the proportional share of the total rent paid to the landlord, shall be presumed to be in excess of the lawful limitation.
- (b) The master tenant or subtenant(s) may petition the Board for an adjustment of the initial rent of the subtenant.
- (c) If a portion of a capital improvement passthrough or a utility increase is allocated to a subtenant, it must be separately identified and not included in the subtenant's base rent. Such amounts are subject to the rules herein and must be discontinued or recalculated pursuant to the applicable rules. Any amount that is improperly calculated or not properly discontinued shall be disallowed.
- (d) In the event of any dispute regarding any allowable increase, or allocation, or any rental amount paid that is not rent, the subtenant may file a claim of unlawful rent increase to have the matter resolved between the subtenant and master tenant, as if the master tenant were the owner of the building. Disallowed or improper increases shall be null and void.

- (e) For any sublease entered into on or before _____ [effective date of new rule] where the sublease rent was not calculated as provided for herein, the master tenant shall have six months from the effective date of this regulation to notice an adjusted proper rent and refund any overpayments paid after the effective date of this section. No petitions alleging overpayments may be filed during this time.
- (f) For any sublease entered into after _____ [effective date of new rule] where the sublease rent was not calculated as provided for herein, the portion of the subtenant's rent that is in excess of the amount allowed pursuant to this Section 6.15C(3) shall be null and void.

IV. Remarks from the Public (cont.)

F. Sharon Costanzo, tenant appellee in the case at 1476 – 26th Ave. (AT010116), corrected the Board by pointing out that she had submitted a diagram that shows that the downstairs unit has a full, working kitchen. Ms. Costanzo stated that she had a "good rapport" with the landlords until, she believes, they realized that because of her age and ill health it would be hard to get rid of her. She decried the "unjust" decision of the Board.

G. Kate Hague, Sharon Costanzo's daughter, told the Board that the agency "owes it to the public" to make the law clear.

H. Landlord Walter Hoffman expressed his opinion that the rent for the premises at 1476 – 26th Ave. is a "giveaway." After reviewing the file, Mr. Hoffman concluded that the tenant had violated the rental agreement and was "taking advantage" of the landlord.

VII. New Business

A. Litigation Update

Senior Administrative Law Judge Tim Lee went over a Memorandum he had prepared, outlining the status of pending and recently decided writs and affirmative lawsuits against the Board.

B. Rule-Making Authority of the Rent Board Commissioners

The Commissioners briefly discussed a request by Supervisor Gonzales that the Office of the City Attorney draft legislation that would restrict the Board's rule-making powers. Executive Director Grubb will attempt to find out the status of this request and Commissioner Lightner will draft a letter opposing any such proposal for the Board's consideration at the next meeting.

VIII. Calendar Items

July 17th, 24th & 31st, 2001 - NO MEETINGS

August 7, 2001

8 appeal considerations (2 cont. from 7/10/01)

Old Business:

- A. Proposed New Rules Section 6.15C(3)
- B. Rule-Making Authority of the Rent Board Commissioners

IX. Adjournment

President Wasserman adjourned the meeting at 8:00 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

01
SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,

JOSEPH GRUBB
EXECUTIVE DIRECTOR

1/6
POLLY MARSHALL
VICE-PRESIDENT

August 7, 2001
25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

JUL 17 2001

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07-17-01A11:51 RCVD

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 1800 - 1806 - 16th Ave.

AL010111
(cont. from 7/10/01)

The landlord appeals the decision granting rent increases based on rents for comparable units.

B. 1000 Howard #305

AT010115
(cont. from 7/10/01)

The tenant appeals the decision partially granting claims of decreased housing services.

C. 1910 Greenwich St. #7

AL010118

The landlord appeals the decision finding a rent increase not warranted by Costa-Hawkins because the tenant is away at grad school.

D. 2311-A California St.

AL010117

The landlord appeals the decision granting a claim of unlawful rent increase but denying a claim of decreased housing services.

E. 305 San Carlos St. #3

AT010119

The tenant appeals the decision granting claims of decreased housing services, but not finding that long-term notice of the conditions had been given by the tenant to the landlord.

F. 1375 Green St. #1, 5, 8 & 11

AL010120

The landlord appeals the decision denying rent increases based on comparable rents.

G. 34 – 6th St. #433

AT010121

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to appear at the hearing.

H. 3116 – 16th St. #17

AT010110

The tenant appeals the portion of the decision certifying seismic retrofit costs on the grounds of financial hardship.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed New Section 6.15C(3), Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

B. Rule-Making Authority of the Rent Board Commissioners

IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

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Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, August 7, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

I. Call to Order

AUG 15 2001

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSE
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:15 p.m.

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II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Lightner;
Marshall; Murphy; Wasserman.
Commissioners not Present: Justman; Mosser.
Staff Present: Wolf.

Commissioner Murphy went off the record at 7:10 p.m.; Commissioner Hobson left the meeting at 7:22 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of July 10, 2001.
(Lightner/Marshall: 5-0)

IV. Remarks from the Public

A. Karen Hull, attorney for the tenants at 1375 Green St. (AL010120), asked that Commissioner Lightner be recused from consideration of this case because one of her employees had acted as a witness for the landlord.

B. Escanio Pianelli, attorney for the tenant in the case at 305 San Carlos St. (AT010119), responded to "mis-characterizations" in the landlord's response to the tenant's appeal, which had not been timely provided to tenant's counsel.

V. Consideration of Appeals

A. 1800-1806 - 16th Ave.

AL010111
(cont. from 7/10/01)

The landlord's petition for rent increases to the tenants in two units was partially granted only as to only one unit (1804). It was found that the rent paid by the tenant in unit 1806 was only slightly less than that for other comparable units, and therefore no additional increase was warranted. Both tenants are the children and two of four beneficiaries of the deceased prior owner; the tenant in unit 1804 had been living in the building rent-free. The landlord appealed, asserting that: the tenant in unit 1806 moved in to that unit upon her own initiative and not pursuant to any request from the landlord, so there was a new rather than a continuing tenancy; Rules Section

6.11(a)(3) requires that the length of occupancy of the subject unit be considered, and not the length of time the tenant has lived in the building; the tenant in unit 1806 has lived in the building for 9 fewer years than the tenant in unit 1804, but her rent is a lesser amount; evidence was presented at the hearing to show that the initial rent for unit 1806 was far less than market; "perfect comparability" was required by the Administrative Law Judge, which is contrary to the language of the Regulation; improvements made to unit 1806 should be taken into account; and the subject tenants should not reap more benefits than their siblings by having life-time rent controlled leases and receiving their share of the sale proceeds of the building.

Since the Memorandum prepared by the Administrative Law Judge had not been timely received by the parties, consideration of this case was continued from the July 10th Board meeting.

MSC: To recuse Commissioner Lightner from consideration of this case.
(Gruber/Marshall: 5-0)

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Marshall/Gruber: 5-0)

MSC: To deny the appeal. (Marshall/Hobson: 3-2; Gruber, Murphy dissenting)

B. 1375 Green St. #

AL010120

The landlord's petition for rent increases for four units based on comparable rents was denied because the Administrative Law Judge found that the initial rents were not set low due to a special relationship but, rather, because the units were in deplorable condition; and because the landlord failed to provide adequate evidence of rents for comparable units at the time the units were rented. On appeal, the landlord asserts: the Administrative Law Judge prevented the petitioner from presenting relevant evidence, excluded competent evidence as hearsay and exhibited bias against the landlord; there was no evidence to show that the rents in the building were set by the owner, rather than the manager, who had a personal relationship with the tenants; testimony from all of the experts at the hearing, including a witness for the tenants, concluded that the initial rents for the units were set at less than market, even considering the condition of the units at the time; and the case of Vega v. City of West Hollywood does not require that the low rents had been set prior to the enactment of a rent control ordinance.

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Marshall/Becker: 5-0)

MSC: To deny the appeal. (Becker/Marshall: 3-2; Gruber, Murphy dissenting)

C. 1000 Howard #305

AT010115
(cont. from 7/10/01)

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,375.00 due to a faulty fire exit door and lack of building cleanliness. The tenant appealed, claiming that the amounts granted are inadequate, considering the nature of the conditions.

After discussion at the July 10th Board meeting, the Commissioners requested that the Administrative Law Judge prepare a Memorandum explaining how he arrived at the amount of the rent reductions and continued consideration of this case.

MSC: To deny the appeal. (Wasserman/Gruber: 4-1; Marshall dissenting)

D. 1910 Greenwich St. #7

AL010118

The landlord's appeal was filed 33 days late because the landlord's attorney did not receive a copy of the Decision until a week after it was mailed out; the attorney had long-standing vacation plans, and thought that another attorney in his firm was going to file the appeal; and he required a transcript of the hearing tapes in order to prepare the appeal.

MSC: To find good cause for the late filing of the appeal.
(Lightner/Gruber: 5-0)

The tenants' petition alleging an unlawful rent increase was granted and a proposed rent increase from \$1,635.00 to \$2,900.00 was found not warranted by the Costa-Hawkins Rental Housing Act. The Administrative Law Judge found that an original tenant still permanently resides on the premises, although he is temporarily living in Ithaca, New York, while attending grad school. On appeal, the landlord contends that: the tenant does not live at the premises, and only visits occasionally; utilities have been switched out of the tenant's name; facts alleged in the Decision are not supported by any evidence in the record; the requirement in Costa-Hawkins is that the tenant no longer permanently reside on the premises, not that they must have permanently vacated; there is no evidence that the tenant will, with certainty, occupy the premises in the future on a long-term basis; and the Decision in this case is in conflict with a recent Decision in another similar case.

MSC: To accept the appeal and remand the case for a new hearing to obtain competent and direct evidence from the tenant who did not attend the original hearing as to his current relationship to the unit and intent to return; telephonic testimony can be arranged.
(Gruber/Lightner: 5-0)

E. 2311-A California St.

AL010117

The tenant's petition alleging unlawful increases in rent and substantial decreases in housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$7,258.00 due to several wrongful rent increases. The landlord was also advised that PG&E costs could not be transferred to the tenant. A claim of decreased housing services due to alleged noise emanating from the landlord's unit was denied. On appeal, the landlord asserts that the rent increase calculations in the Decision are incorrect; that the tenant's move-in date was July of 1994, and not September; and that the landlord did not agree to pay for all utilities at the inception of the tenancy.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

F. 305 San Carlos St. #3

AT010119

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$2,266.88 due to numerous habitability defects on the premises. Long-term notice of the conditions was not proved to have been given by the tenant to the landlord, so the rent reductions were limited to the one year period prior to the filing of the petition. On appeal, the tenant asserts that the Administrative Law Judge erred by requiring that notice as to the defects had to have been given repeatedly. Rather, the tenant contends that the rent reductions for 4 of the conditions should commence on May 10, 1994, the later of two possible dates that the parties agree the landlord came to the premises. As to the remaining problem of the broken doorbell, the tenant claims that the rent reduction should begin on April 1, 1992, or one week after the landlord indicated in writing that he was aware of the defect and the tenant informed the landlord that he wanted it repaired.

MSF: To accept the appeal and remand the case to the Administrative Law Judge to find that long-term notice was given back to May 10, 1994 as to the protruding shower valves and the doorbell, and to adjust the rent reductions granted accordingly.
(Wasserman/Marshall: 2-3; Becker, Gruber, Lightner dissenting)

MSF: To accept the appeal and remand the case to the Administrative Law Judge to find that long-term notice was given back to May 10, 1994 as to the protruding shower valves, the doorbell, the bathroom ceiling leaks, bathroom window frame and counter backsplash, and to adjust the rent reductions granted accordingly.
(Becker/Marshall: 2-3; Gruber, Lightner, Wasserman dissenting)

MSC: To deny the appeal. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

G. 34 – 6th St. #433

AT010121

The tenant's appeal was filed three months late because the tenant claims not to have received a copy of the Dismissal of his petition.

MSC: To find good cause for the late filing of the appeal.
(Becker/Lightner: 5-0)

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant claims not to have received the Notice of Hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Marshall: 5-0)

H. 3116 – 16th St. #17

AT010110

The landlord's petition for certification of capital improvement costs for 18 of 30 units was granted. One tenant filed an appeal on the grounds of financial hardship. Pursuant to the Moratorium on processing of capital improvement petitions, and a subsequent Request for Continued Processing on the part of the landlord, the portion of the Decision certifying seismic retrofit costs only is being appealed at this time.

MSC: To recuse Commissioner Wasserman from consideration of this appeal. (Becker/Gruber: 5-0)

MSC: To deny the appeal. (Lightner/Gruber: 4-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Board received the following communications:

A. An Invitation from the Mayor to the signing of the 2001-2002 budget on August 9th at 3:00 p.m.

B. The Department's Annual Statistical Report.

C. The Agenda and Notice of Public Hearing for the meeting on August 21st, which will be held at City Hall, Room 406.

VII. Director's Report

In the absence of Executive Director Grubb, Deputy Director Wolf informed the Board that there would be a hearing on the Proposed Order in the case of Quigg v. Rent Board (Superior Court Case No. 316928) on August 8th at 3:30 p.m. in Department 302.

IV. Remarks from the Public (cont.)

C. Karen Crommie encouraged the Board to pass proposed new Section 6.15C(3), since "tenants should be subject to the same rules as landlords."

VIII. New Business

Commissioner Marshall asked that a discussion of the problem raised in the case of Goodwin v. Rent Board (Superior Court Case No. 317339) be put on the calendar for a future meeting. In this case, the Court found that the landlord was entitled to two operating and maintenance expense increases, one based on his purchase and one based on the increased property taxes incurred by the estate after the death of the prior owner. This issue will be discussed at the September 18th meeting.

IX. Calendar Items

August 14, 2001 - NO MEETING

August 21, 2001

6 appeal considerations

6:30 Public Hearing:

Proposed New Section 6.15C(3) Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

X. Adjournment

President Wasserman adjourned the meeting at 8:45 p.m.



July 16, 2001

JUL 17 2001

SAN FRANCISCO
PUBLIC LIBRARYNOTICE OF PUBLIC HEARING

DATE: AUGUST 21, 2001
TIME: 6:00 P.M.
PLACE: CITY HALL
ROOM 406
SAN FRANCISCO, CALIFORNIA

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON PROPOSED NEW SECTION 6.15C(3), BELOW. THE INTENT OF THE NEW SECTION IS TO REQUIRE THAT MASTER TENANTS PAY AN EQUITABLE, PROPORTIONAL SHARE OF THE RENT FOR THE UNIT.

6.15C(3) Partial Sublets. In the event a master tenant does not sublease the entire rental unit, as anticipated in Section 37.3 (c), then the master tenant may charge the subtenant(s) no more than the subtenant(s) proportional share of the total current rent paid to the landlord by the master tenant for the housing and housing services to which the subtenant is entitled under the sub-lease.

- (a) The allowable proportional share of total rent may be calculated based upon the square footage shared with and occupied exclusively by the subtenant; or an amount substantially proportional to the space occupied by and shared with the subtenant (e.g. three persons splitting the entire rent in thirds) or any other method that allocates the rent such that the subtenant pays no more to the master tenant than the master tenant pays to the landlord for the housing and housing services to which the subtenant is entitled under the sublease. In establishing the proper initial base rent, additional housing services (such as utilities) provided by, or any special obligations of, the master tenant, or evidence of the relative amenities or value of rooms, may be considered by the parties or the Rent Board when deemed appropriate. Any methodology that shifts the rental burden such that the subtenant(s) pays substantially more than their square footage

PAGE 2
NOTICE OF PUBLIC HEARING, SECTION 6.15C(3)

portion, or substantially more than the proportional share of the total rent paid to the landlord, shall be presumed to be in excess of the lawful limitation.

- (b) The master tenant or subtenant(s) may petition the Board for an adjustment of the initial rent of the subtenant.
- (c) If a portion of a capital improvement passthrough or a utility increase is allocated to a subtenant, it must be separately identified and not included in the subtenant's base rent. Such amounts are subject to the rules herein and must be discontinued or recalculated pursuant to the applicable rules. Any amount that is improperly calculated or not properly discontinued shall be disallowed.
- (d) In the event of any dispute regarding any allowable increase, or allocation, or any rental amount paid that is not rent, the subtenant may file a claim of unlawful rent increase to have the matter resolved between the subtenant and master tenant, as if the master tenant were the owner of the building. Disallowed or improper increases, shall be null and void.
- (e) For any sublease entered into on or before _____ [effective date of new rule] where the sublease rent was not calculated as provided for herein, the master tenant shall have six months from the effective date of this regulation to notice an adjusted proper rent and refund any overpayments paid after the effective date of this section. No petitions alleging overpayments may be filed during this time.
- (f) For any sublease entered into after _____ [effective date of new rule] where the sublease rent was not calculated as provided for herein, the portion of the subtenant's rent that is in excess of the amount allowed pursuant to this Section 6.15C(3) shall be null and void.

You may either comment at the Public Hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department no later than **5 p.m. on Monday, August 13th, 2001**, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 12 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.



NOTICE OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
August 21, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

CITY HALL, ROOM 406

AGENDA

DOCUMENTS DEPT.

AUG 15 2001

SAN FRANCISCO
PUBLIC LIBRARY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- 1
a/
- SHIN MAI AUNG
- LARRY BEACH BECKER
- DAVID GUSTAV GRUBER
- FREDERICK HOBSON
- ANTHONY JUSTMAN
- MERRIE T. LIGHTNER
- NEVEO MOSSER
- BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Public Hearing

6:00 Proposed New Section 6.15C(3) Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

- VI. Consideration of Appeals

A. 91A Farallones AL010122

The landlord appeals the decision granting rent reductions due to decreased housing services and determining rent overpayments.

B. 1100 Gough St. 15-F AT010123

The tenant appeals the dismissal of a petition alleging decreased housing services due to failure to appear at the hearing.

C. 127 Naples St. AT010124

The tenant, who failed to appear at the hearing, appeals the dismissal of a petition alleging decreased housing services, failure to repair and seeking a determination as to the proper base rent.

D. 725 Geary #20 AL010125

The landlord appeals the decision granting a claim of decreased housing services.

E. 2238 Hyde St. #15 AT010126

The tenant appeals the decision determining the rent for a non-comparable unit.

F. 1959 Oak St. #2

AT010127

One tenant appeals the decision granting rent increases based on increased operating expenses.

- VII. Communications
- VIII. Director's Report
- IX. Old Business
- IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- X. New Business
- XI. Calendar Items
- XII. Adjournment

ACCESSIBLE MEETING POLICY

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會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

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Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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**MINUTES OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, August 21, 2001 at 6:00 p.m. at
City Hall, Room 406

POLLY MARSHALL
VICE-PRESIDENT

DOCUMENTS DEPT.

AUG 28 2001

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Commissioner Becker called the meeting to order at 6:11 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Lightner; Mosser.
Commissioners not Present: Marshall; Wasserman.
Staff Present: Grubb; Wolf.

Commissioner Justman appeared on the record at 6:27 p.m.; Commissioner Murphy arrived at 6:33 p.m.; and Commissioner Hobson went off the record at 7:47 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 7, 2001.
(Gruber/Aung: 4-0)

IV. Public Hearing

Proposed New Section 6.15C(3) Requiring that a Master Tenant Pay a Pro-Rata Share of the Rent

A Public Hearing commenced at 6:13 on proposed Rules and Regulations Section 6.15C(3). Eleven individuals spoke as follows below:

1. Master Tenant Michael Quirk spoke against the proposed regulation, explaining that: he has an unequal relationship with his roommates, in that he is responsible for paying the rent, including eviction; he should be compensated for his additional responsibilities; and he believes that this proposal will drive rooms off the market.
2. Brook Turner of the Coalition for Better Housing said that his organization supports the proposal, because it is "poor public policy to allow Master Tenants to take advantage of other tenants."
3. Master Tenant Emily Shaver expressed her disfavor, saying that she could lose her home if she has to cover someone else's rent; and that she is not a property owner, and shouldn't be treated as such.

4. Janan New, Director of the S.F. Apartment Association, spoke in support of "closing a loophole that allows unsophisticated tenants to be taken advantage of." She asked that the Commission "stop the profiteering."

5. Landlord Andrew Long spoke in support, since he has had Master Tenants "gouge" new roommates. Mr. Long said that it is unfair for some folks to live for next to nothing; that such Master Tenants are "greedy little middlemen"; and suggested that they collect deposits to cover expenses, just like owners do.

6. Michelle Horneff, President of the Professional Property Managers Association, spoke in support, saying: "Everyone should pay their fair share, and no more than their fair share."

7. Tommi Aviccolli-Mecca of the Housing Rights Committee expressed "mixed feelings." While he agreed that subtenants shouldn't be burdened with the whole rent, he feared that this proposal will just be "another way for feuding tenants to go at each other." Mr. Aviccolli-Mecca suggested that subtenants' share of the rent couldn't be more than the Master Tenant's, rather than doing a square footage allocation; and said that the regulation should not have retroactive effect.

8. Master Tenant Lewis Bording said that "government should stay out"; and that rents are coming down due to market conditions. Mr. Bording said that this proposal will mean that Master Tenants will no longer choose to rent out rooms, and asked what recourse he had when a subtenant left, owing in excess of \$1,000.00

9. Small property owner Patricia Carter said that Master Tenants have the same problems as small property owners, and that the best thing would be to "get rid of rent control."

10. Cindy Arnold of Tenants for Home Ownership said that she knows Master Tenants who are living for free, which is unfair, since property owners can't charge whatever they want.

11. Master Tenant Emily Shaver expressed her belief that it is sufficient that Master Tenants are required to disclose the amount of rent they pay to the landlord, and "they can decide if they want to live there or not."

After the conclusion of the Public Hearing at 6:35 p.m., the Commissioners engaged in discussion. Commissioner Lightner said that the arguments of the Master Tenants are all things that landlords deal with all the time; that the proposed regulation is "flexible for a reason; and allows Administrative Law Judges to take any extra burdens into account. Commissioner Hobson expressed his support for Commissioner Lightner's "good work" and said there will only be an adverse effect on "bad relationships." Commissioners Aung and Becker expressed their belief that the proposal should be prospective only, and not interfere with existing contracts. Commissioner Murphy said that the City Attorney had informed the Board that they could enact regulations with retroactive effect in the case of Proposition H, and by only allowing prospective application, the Board would be saying "it's all right if you got in on time." Commissioner Lightner reminded the Board that Proposition I had retroactive rent rollback provisions, and the Board briefly engaged in a discussion of vested rights. Commissioner Justman expressed his view that it is "not consistent with rent control to allow this to go on", in that the Board should be encouraging the provision of affordable housing, and not providing an "economic windfall" to a non-owner. He said that this is "the right thing to do."

The Board then agreed on certain minor amendments introduced by Commissioners Lightner and Becker. Since there was insufficient support for Commissioner Becker's request for a 6-month period before the rents have to be adjusted, the Board voted as follows below:

MSC: To adopt proposed new Rules and Regulations Section 6.15C(3), with amendments. (Lightner/Gruber: 3-2; Aung, Becker dissenting)

The new regulation reads as follows:

Section 6.15C Master Tenants

- (3) Partial Sublets. In the event a Master Tenant does not sublease the entire rental unit, as anticipated in Section 37.3 (c), then the Master Tenant may charge the subtenant(s) no more than the subtenant(s) proportional share of the total current rent paid to the landlord by the Master Tenant for the housing and housing services to which the subtenant is entitled under the sub-lease.
- (a) The allowable proportional share of total rent may be calculated based upon the square footage shared with and/or occupied exclusively by the subtenant; or an amount substantially proportional to the space occupied by and/or shared with the subtenant (e.g. three persons splitting the entire rent in thirds) or any other method that allocates the rent such that the subtenant pays no more to the Master Tenant than the Master Tenant pays to the landlord for the housing and housing services to which the subtenant is entitled under the sublease. In establishing the proper initial base rent, additional housing services (such as utilities) provided by, or any special obligations of, the Master Tenant, or evidence of the relative amenities or value of rooms, may be considered by the parties or the Rent Board when deemed appropriate. Any methodology that shifts the rental burden such that the subtenant(s) pays substantially more than their square footage portion, or substantially more than the proportional share of the total rent paid to the landlord, shall be rebuttably presumed to be in excess of the lawful limitation.
 - (b) The Master Tenant or subtenant(s) may petition the Board for an adjustment of the initial rent of the subtenant.
 - (c) If a portion of a capital improvement passthrough or a utility increase is allocated to a subtenant, it must be separately identified and not included in the subtenant's base rent. Such amounts are subject to the rules herein and must be discontinued or recalculated pursuant to the applicable rules. Any amount that is improperly calculated or not properly discontinued shall be disallowed.
 - (d) In the event of any dispute regarding any allowable increase, or allocation, or any rental amount paid that is not rent, the subtenant may file a claim of unlawful rent increase to have the matter resolved between the subtenant and Master Tenant, as if the Master Tenant were the owner of the building. Disallowed or improper increases shall be null and void.
 - (e) For any sublease entered into on or before August 22, 2001, where the sublease rent was not calculated as provided for herein, the Master

Tenant shall have six months from the effective date of this regulation to notice an adjusted proper rent and refund any overpayments paid after the effective date of this section. No petitions alleging overpayments may be filed during this time.

- (f) For any sublease entered into after August 22, 2001, where the sublease rent was not calculated as provided for herein, the portion of the subtenant's rent that is in excess of the amount allowed pursuant to this Section 6.15C(3) shall be null and void.

V. Consideration of Appeals

A. 91A Farallones

AL010122

The tenant's petition alleging decreased housing services and unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$18.55 due to rent overpayments and \$4,875.00 because of leaks and water damage in the unit. The landlord failed to appear at the hearing. On appeal, the landlord claims not to have received notice of the hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Lightner/Gruber: 5-0)

B. 1100 Gough St. 15-F

AT010123

The tenants' petition alleging decreased housing services was dismissed due to their failure to appear at the properly noticed hearing. On appeal, the tenants explain that they believed that their request for arbitration rather than mediation would result in another hearing date being set, and that this is why they failed to appear on the date the mediation had been scheduled.

MSC: To accept the appeal and remand the case for a new hearing.
(Lightner/Aung: 5-0)

C. 127 Naples St.

AT010124

The tenant's petition alleging decreased housing services, the landlord's failure to repair and requesting a determination as to the proper base rent was dismissed due to his failure to appear at the properly noticed hearing. On appeal, the tenant explains that problems with traffic and public transportation resulted in a trip that should take a half an hour taking more than an hour.

MSC: To accept the appeal and remand the case for a new hearing.
(Gruber/Aung: 5-0)

D. 725 Geary #20

AL010125

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$300.00 due to the lack of a working heater in the unit. The landlord, who failed to appear at the hearing, appeals on the grounds that the Administrative Law Judge had "one-sided wrongful information", including the wrong base rent amount.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing only to determine the proper base rent and whether the tenant has already been compensated for the lack of heat in the unit. If so, any such sums should be offset against the amount determined to be owing from the landlord to the tenant. (Gruber/Aung: 5-0)

E. 2238 Hyde St. #15

AT010126

The landlord filed a petition requesting a determination of the rent for a non-comparable unit pursuant to Ordinance Section 37.9(a)(8)(iv). The Administrative Law Judge found that the subject unit is not comparable to the replacement unit being offered to the tenant, and that the lawful base rent for the replacement unit is in the amount of \$2,848.75. The tenant appeals, claiming that the Administrative Law Judge's reliance on the landlord's "subjective preferences" creates an "insurmountable burden" for the tenant; and that the physical layouts of the two units are not so different as to make them non-comparable.

MSC: To deny the appeal. (Gruber/Lighner: 5-0)

F. 1959 Oak St. #2

AT010127

The landlords' petition for rent increases based on increased operating expenses was granted, allowing for 7% base rent increases to the tenants in six units. However, since code violations were proved to be in existence at the building at the time of the hearing, and notices of rent increase had not been served on the tenants in five of the units, the rent increases to those units were ordered deferred until such time as the code violations are abated. Since notice of the rent increase was issued to the tenants in unit #2 effective September 1, 1999, prior to the issuance of the Notice of Violation, no defense to the increase was found to exist as to the tenants in that unit. The tenants in unit #2 appeal the decision, asserting that it is inequitable that they also have experienced the landlords' failure to make necessary repairs, but they are being singled out for payment of the operating and maintenance expense increase.

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Becker/Lightner: 4-0)

MSC: To recuse Commissioner Murphy from consideration of this appeal. (Becker/Gruber: 4-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to determine whether code violations existed at the premises at the time the rent increase notice to the tenants in unit #2 was to go into effect; if so, deferral of the rent increase is warranted until such time as the conditions are abated. (Becker/Gruber: 4-0)

VI. Communications

The Commissioners received two letters regarding proposed new Rules Section 6.15C(3).

VII. Remarks from the Public

A. Tenant Ruben Tensel of 91A Farallones (AL010122) told the Board that he has had massive leaks throughout the house since 1998, but no repairs had been made until recently. The landlord claimed not to have received notice of the hearing, but Mr. Tensel has evidence that she has received other mail at that address. He believes that he should not have to live with sub-standard conditions.

B. Tenant Scott Magness of 1959 Oak St. #2 (AT010127) asked for clarification regarding the status of his appeal.

VIII. Calendar Items

August 28, 2001 - NO MEETING

September 4, 2001
10 appeal considerations

IX. Adjournment

Commissioner Becker adjourned the meeting at 8:19 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
September 4, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

- I. Call to Order
- KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

AUG 28 2001

SAN FRANCISCO
PUBLIC LIBRARY

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 670 Eddy St. #302

AT010129

The tenant appeals the decision denying her claims of unlawful rent increase, decreased housing services and failure to repair.

B. 110 Portola Dr. #2

AL010128

The landlord appeals the remand decision granting a claim of decreased housing services.

C. 3330 Pierce St. #104

AL010131

The landlord appeals the decision denying the imposition of an operating and maintenance expense increase as to one unit.

D. 2333 Market St.

AT010132

The tenant appeals the decision denying his claim of unlawful rent increase.

E. 1684 & 1688 Grove St.

AT010028 & -29

The tenants in two units appeal the decision granting certification of capital improvement costs.

F. 3711 Fillmore St. #302 & 304

AT010037 & -0130

The tenants in two units appeal the decision granting certification of capital improvement costs; one on the grounds of financial hardship.

G. 542 Mason St. #42

AT010040

The tenant untimely appeals the decision certifying capital improvement costs on the grounds of financial hardship.

H. 140 – 20th Ave.

AL010041

The landlord appeals the decision partially granting certification of capital improvement costs.

I. 3116 – 16th St. #17

AT010042

The tenant appeals the decision granting certification of capital improvement costs on the grounds of financial hardship.

J. 760 Geary St. #312 & M310

AT010046 & -92

The tenants in two units appeal the decision granting certification of capital improvement costs on the grounds of financial hardship.

VI. Communications

VII. Director's Report

VIII. Old Business

IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment

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SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, September 4, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

I. Call to Order

SEP 14 2001

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:06 p.m. SAN FRANCISCO
PUBLIC LIBRARY

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Mosser;
Wasserman.
Commissioners not Present: Lightner; Marshall.
Staff Present: Grubb; Wolf.

Commissioner Justman appeared on the record at 6:11 p.m.; Commissioner
Murphy arrived at the meeting at 6:15 p.m.; and Commissioner Becker went off the
record at 6:38 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 21, 2001, with the following
addition to the comments upon the conclusion of the Public Hearing
concerning new Rules and Regulations Section 1.21:
Commissioner Hobson asked that the record also note that he
stated that the regulation, if prospective, would create two different
classes of tenants, not treated equally.
(Becker/Gruber: 4-0)

IV. Consideration of Appeals

A. 3330 Pierce St. #104

AL010131

The landlord's petition for rent increases based on increased operating expenses
was granted, resulting in 7% base rent increases to the tenants in 15 units. The
increase was denied as to the tenants in unit #104, because they had received a
comparable rent increase effective April 1, 2001, a date which fell within Year 2 of
the operating and maintenance expense petition. The landlord appeals only as to
the denial of the increase to unit #104, asserting that the decision on the
comparable rent increase established the base rent as of December, 1995, and
factored in only annual increases since that time, which should not preclude an
additional increase based on subsequent increased operating expenses.

MSC: To accept the appeal and remand the case to the Administrative
Law Judge on the record to grant the 7% operating and

maintenance expense rent increase to the tenants in unit #104, based on the facts of this case. (Gruber/Murphy: 5-0)

B. 2333 Market St.

AT010132

The tenant's petition alleging an unlawful increase in rent was denied because the Administrative Law Judge found that a \$100 rent increase was a permissible charge for the additional housing service of being allowed to have a cat on the premises. On appeal, the tenant contends that he did not know that it could be unlawful to charge additional rent for a pet prior to filing the petition; and that there are other factual errors in the decision.

During discussion, Commissioner Hobson said that there is a State law that prohibits increases in rent because of a pet on the premises. Consideration of this appeal was continued to the meeting on September 18th in order for Commissioner Hobson to provide staff with a copy of this bill to disseminate to the Commissioners.

C. 140 – 20th Ave.

AL010041

The landlords' petition for certification of capital improvement costs to 11 of 18 units was granted, in part. The landlord appeals the disallowance of a cost of \$7,698.00 for "construction management" of a brick façade project, asserting that: this cost covered the planning, design and development of the construction work done, some of which occurred during construction; the fee billed by the property manager did not cover the property manager's actual out-of-pocket staff expense; and both the early project management work and the later project management work were necessary parts of the project and the costs should be certified as part of the capital improvements.

After discussion, it was the consensus of the Board to continue consideration of this appeal in order to obtain a Memorandum from the Administrative Law Judge.

D. 110 Portola Dr. #2

AL010128

The tenant's petition alleging decreased housing services due to removal of the right to have an extra front door key was granted, and the landlords were found liable in the amount of \$315.00, or \$70.00 per month. On appeal, among other arguments, the landlords asserted that the Administrative Law Judge erred in granting more than the amount requested by the tenant in her petition. The Commissioners accepted the landlords' appeal only to adjust the amount of the rent reduction to an amount no greater than that requested in the tenant's petition, or \$50.00, and denied the appeal as to all other issues. The landlords appeal the remand decision, claiming that: the tenant failed to meet her burden of proof; the landlords were not given adequate time to respond to the tenant's evidence upon appeal; the facts do not warrant the tenant being awarded \$50.00 per month; the decision in this case is not in keeping with previous cases decided by the Board; and the Administrative Law Judge exhibited bias against the landlord.

MSC: To recuse Commissioner Gruber from consideration of this appeal. (Justman/Murphy: 5-0)

MSC: To deny the appeal. (Becker/Aung: 3-2; Mosser, Murphy dissenting)

E. 670 Eddy St. #302

AT010129

The tenant's petition alleging an unlawful increase in rent, decreased housing services and the landlord's failure to repair was denied because the tenant failed to prove substandard conditions in the residential hotel, and the rent increase was authorized pursuant to the banking provisions of the Ordinance. On appeal, the tenant maintains that she cannot afford to pay the rent increase and that "pain and suffering" should be taken into account in the disposition of cases.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

F. 1684 & 1688 Grove St.

AT010028 & -29

The landlord's petition for certification of capital improvement costs was granted, resulting in monthly passthroughs in the amount of \$99.47 to the tenants in three units. The tenants in two of the units appeal, asserting that: the capital improvement work was necessitated by the landlord's deferred maintenance; the work was in the nature of repair; the landlord was not required to provide proof of payment; and the decision of the Administrative Law Judge is unfair and biased against the tenants.

MSC: To deny the appeals. (Gruber/Murphy: 4-1; Hobson dissenting)

G. 3711 Fillmore St. #302 & 304

AT010037 & -0130

The landlord's petition for certification of capital improvement costs, including seismic work, to the tenants in two units was certified. The tenants in both units appeal the decision. The tenant in unit #304 claims that the Administrative Law Judge did not take into account necessary repairs that should not have been passed through to the tenants. The tenant in unit #302 asserts that the work also benefits the tenants in another building, which is joined at the roof with the subject building; that the amount of the passthrough is incorrect; and that payment of the passthrough would constitute a financial hardship.

MSC: To deny the appeal of the tenant in unit #304. (Gruber/Murphy: 5-0)

MSC: To deny the substantive appeal of the tenant in unit #302.
(Gruber/Murphy: 5-0)

MSC: To accept the appeal of the tenant in unit #302 and remand the case for a hearing on the tenant's claim of financial hardship only.
(Murphy/Aung: 5-0)

H. 542 Mason St. #42

AT010040

The landlords' petition for certification of capital improvement costs to the tenants in 18 units was granted. The tenants in ten units appealed the Decision on the grounds of financial hardship; five of those appeals were granted and remanded for hearing. The tenants in one additional unit untimely appeal the decision on the grounds of financial hardship. The tenant's appeal was filed 3 and one-half months late because the tenant, who is elderly, had been in the hospital at the time the decision was issued and forgot to file until other tenants in the building received their decisions on remand.

MSC: To recuse Commissioner Aung from consideration of this appeal.
(Gruber/Murphy: 5-0)

Since there was only one voting Tenant Commissioner in attendance after Commissioner Aung's recusal, this case was continued to the next meeting.

I. 3116 – 16th St. #17

AT010042

The landlords' petition for certification of capital improvement costs to 18 of 30 units was granted, in part. The tenants in one unit appeal the decision on the grounds of financial hardship.

MSC: To recuse Commissioner Wasserman from consideration of this appeal. (Justman/Murphy: 5-0)

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

J. 760 Geary St. #312 & M310

AT010046 & -92

The landlord's petition for certification of capital improvement costs to 33 of 92 units was granted, in part. Two tenants appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal of the tenant in unit number 312 and remand the case for a hearing on the tenant's claim of financial hardship.
(Hobson/ Aung: 5-0)

MSC: To accept the appeal of the tenant in unit number M310 and remand the case for a hearing on the tenant's claim of financial hardship. (Aung/Hobson: 5-0)

V. Communications

The Commissioners received the office workload statistics for the month of July, 2001.

VI. Director's Report

Executive Director Grubb informed the Board that he will be on vacation from September 6th through September 21st. Deputy Director Delene Wolf will be acting in his stead.

VII. Remarks from the Public

A. The landlord involved in the case at 110 Portola Dr. #2 (AL010128) expressed his feeling that he did not get a fair hearing the first time around; said that the Administrative Law Judge took the tenant's word over theirs; and failed to change his findings on remand even when faced with conflicting evidence.

B. The tenant in the case at 2333 Market St. (AT010132) told the Board that he owned his cat for four years before moving into the property; that he had pointed out 11 discrepancies in the Decision, but the Administrative Law Judge only admitted to 1; and said that the Master Tenant's witness wasn't credible.

VIII. Calendar Items

September 11, 2001 - NO MEETING

September 18, 2001

12 appeal considerations (3 cont. from 9/4/01)

Rules and Regulations Section 6.10(e)

IX. Adjournment

President Wasserman adjourned the meeting at 7:11 p.m.

City and County of San Francisco

Residential Rent Stabilization
and Arbitration Board



NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

3/01
SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
September 18, 2001
25 Van Ness Avenue, #70, Lower Level

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

AGENDA

DOCUMENTS DEPT.

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

SEP 14 2001

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NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A.2333 Market St.

AT010132
(cont. from 9/4/01)

The tenant appeals the decision denying his claim of unlawful rent increase.

B. 140 - 20th Ave.

AL010041
(cont. from 9/4/01)

The landlord appeals the decision partially granting certification of capital improvement costs.

C. 542 Mason St. #42

AT010040
(cont. from 9/4/01)

The tenant untimely appeals the decision certifying capital improvement costs on the grounds of financial hardship.

D. 1200 Taylor #18 & #4

AT010047 & -48

The tenants in two units appeal the decision certifying capital improvement costs.

E. 790 Church St. #105

AT010049

The tenant in one unit appeals the decision certifying capital improvement costs.

F. 1137 Bush St. #5

AT010050

The tenant in one unit appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

G. 270 Buckingham Way

AT010097

The tenant untimely appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

H. 2200 Beach St. #102

AT010105

The tenant in one unit appeals the decision certifying capital improvement costs.

I. 653 Capp St.

AT010114

The tenant untimely appeals the decision certifying capital improvement costs on the grounds of financial hardship.

J. 1902 Page St. #2

AL010133

The landlord, who failed to appear at the hearing, appeals the decision granting claims of decreased housing services.

K. 902 Divisadero #202

AL010134

The landlord, who failed to appear at the hearing, appeals the decision granting claims of decreased housing services.

L. 2330 Larkin St. #32

AT010090

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

VI. Communications

VII. Director's Report

VIII. Old Business

Rules and Regulations Section 6.10(e)

Goodwin v. Rent Board (Superior Court Case No. 317339)

IX. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment

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Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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WILLIE L. BROWN, JR.
MAYOR

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, September 18, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

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KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:06 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Murphy;
Wasserman.
Commissioners not Present: Lightner; Mosser.
Staff Present: Wolf.

Commissioner Justman appeared on the record at 6:10 p.m.; Commissioner
Marshall arrived at the meeting at 6:16 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of September 4, 2001.
(Murphy/Gruber: 5-0)

IV. Consideration of Appeals

A. 2333 Market St.

AT010132
(cont. from 9/4/01)

The tenant's petition alleging an unlawful increase in rent was denied because the
Administrative Law Judge found that a \$100 rent increase was a permissible charge
for the additional housing service of being allowed to have a cat on the premises.
On appeal, the tenant contends that he did not know that it could be unlawful to
charge additional rent for a pet prior to filing the petition; and that there are other
factual errors in the decision.

During discussion at the meeting on September 4th, Commissioner Hobson said
that he believes there is a State law that prohibits increases in rent because of a pet
on the premises. Consideration of this appeal was therefore continued in order for
Commissioner Hobson to provide staff with a copy of this bill to disseminate to the
Commissioners. At this evening's meeting, Commissioner Hobson reported that
the legislation he was thinking of only applied to public housing.

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Becker, Marshall
dissenting)



B. 140 – 20th Ave.

AL010041
(cont. from 9/4/01)

The landlords' petition for certification of capital improvement costs to 11 of 18 units was granted, in part. The landlord appeals the disallowance of a cost of \$7,698.00 for "construction management" of a brick façade project, asserting that: this cost covered the planning, design and development of the construction work done, some of which occurred during construction; the fee billed by the property manager did not cover the property manager's actual out-of-pocket staff expense; and both the early project management work and the later project management work were necessary parts of the project and the costs should be certified as part of the capital improvements. At the meeting on September 4, 2001, it was the consensus of the Board to continue consideration of this appeal in order to obtain a Memorandum from the Administrative Law Judge.

MSC: To accept the appeal and remand the case for a hearing to determine reasonable construction management costs, if any.
(Gruber/Murphy: 5-0)

C. 542 Mason St. #42

AT010040
(cont. from 9/4/01)

The tenant's appeal was filed 3 and one-half months late because the tenant, who is elderly, had been in the hospital at the time the decision was issued and forgot to file until other tenants in the building received their decisions on remand.

MSC: To recuse Commissioner Aung from consideration of this appeal.
(Becker/Gruber: 5-0)

MSC: To find good cause for the late filing of the appeal.
(Becker/Marshall: 4-1; Gruber dissenting)

The landlords' petition for certification of capital improvement costs to the tenants in 18 units was granted. The tenants in ten units appealed the Decision on the grounds of financial hardship; five of those appeals were granted and remanded for hearing. The tenants in one additional unit untimely appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 4-1; Gruber dissenting)

D. 1200 Taylor #18 & #4

AT010047 & -48

The landlord's petition for rent increases based on increased operating expenses and certification of capital improvement costs to 12 of 16 units was granted. The tenants in two units appealed the decision as to the capital improvement passthrough and the operating expense increase. Pursuant to the Moratorium on processing of capital improvement passthroughs, the tenants' appeals as to the operating and maintenance expense increases were denied at the meeting on June 5, 2001. In their appeal as to the capital improvement passthrough, the tenants in unit #18 claim that: any increases granted should not apply to them because they were served notice of the hearing under an incorrect name; the new radiator valves did not benefit their unit; the landlord was allowed to supplement the evidentiary

record after the hearing with invoices that the tenants did not have an opportunity to refute; the services of an independent estimator should have been used in this case; the replacement of the boiler has resulted in less heat; the new awning and basement lighting do not benefit the tenants in the building; tile replacement in the laundry room should not be allowed since the tenants pay for use of the facilities in that room; the phone based entry system resulted in a decrease in services; the costs were inflated; much of the work was cosmetic and unnecessary; and the new owner should not be allowed to pass through costs incurred by the prior owner. The tenants in unit #4 assert that: the tenants were not provided with the opportunity to prove their socioeconomic status in order to assert the "luxury item" defense to certain of the capital improvements; the work on the back porch enclosure was promised to the tenants prior to their occupancy of the unit at no additional cost; the tenants were given insufficient time to obtain documentary evidence to prove their case; and the landlord has the burden of proof, which was not met.

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Murphy/Marshall: 5-0)

MSC: To deny the appeals of the tenants in unit #18 and unit #4.
(Murphy/Gruber: 4-1; Hobson dissenting)

E. 790 Church St. #105

AT010049

The landlords' petition for certification of capital improvement costs to 22 of 30 units was granted. One tenant appeals the decision, asserting that since the decision was mailed but not served prior to April 1, 2001, it should be stayed pursuant to the temporary Moratorium on the processing of capital improvement petitions that went into effect on April 1st.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

F. 1137 Bush St. #5

AT010050

The landlords' petition for certification costs was granted pursuant to a Minute Order. One tenant appeals, asking for a temporary deferral of the passthrough on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Murphy/Gruber: 5-0)

G. 270 Buckingham Way

AT010097

The tenant originally filed a financial hardship appeal prior to the issuance of a decision on the landlord's petition for certification of capital improvement costs. Her appeal and supporting documents were therefore returned to her, and she was instructed to re-file upon the issuance of a decision. The tenant, who is elderly, became confused and failed to re-file the appeal until 4-1/2 months after the deadline had passed.

MSC: To find good cause for the late filing of the appeal.
(Becker/Justman: 5-0)

The tenant appeals the Minute Order certifying capital improvement costs on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Murphy: 5-0)

H. 2200 Beach St. #102

AT010105

The tenant's hardship appeal was filed almost seven months late because she planned on being able to pay the passthrough, and had no idea that her business would go under as a result of the dotcom downturn.

MSC: To find no good cause for the late filing of the appeal; the Decision is therefore final. (Gruber/Murphy: 5-0)

I. 653 Capp St.

AT010114

The tenant's appeal was filed over two months late because she speaks only limited English and did not realize that the Decision would affect her.

MSC: To find good cause for the late filing of the appeal.
(Becker/Gruber: 5-0)

The landlords' petition for certification of capital improvement costs to 5 of 6 units was granted. One tenant appeals the decision on the grounds of financial hardship and that several of the improvements are not of benefit to her.

MSC: To accept the appeal and remand the case for a hearing on the substantive defenses raised in the tenant's appeal and her claim of financial hardship. (Murphy/Becker: 5-0)

J. 1902 Page St. #2

AL010133

The tenant's petition alleging unlawful rent increases was granted, and the landlord was found liable to the tenant in the amount of \$3,407.94. The landlord failed to appear at the hearing. On appeal, the landlord claims to have been scheduled for an operation on the day of the hearing, and that she had been assured by the tenant that he would be withdrawing the petition.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Gruber: 5-0)

K. 902 Divisadero #202

AL010134

The tenant's petition alleging a substantial decrease in housing services was granted, and the landlord was found liable to the tenant in the amount of \$6,280.00 due to serious habitability problems on the premises. The landlord failed to appear at the hearing. On appeal, the landlord claims not to have received notice of the hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Murphy/Justman: 4-1; Gruber dissenting)

L. 2330 Larkin #32

AT010090

The landlords' separate petitions for rent increases based on increased operating expenses and certification of capital improvement costs were granted. The tenant appealed both decisions on the grounds of financial hardship, which were consolidated on remand. The Administrative Law Judge found that the tenant had significant assets held in trust which could be accessed to meet her needs, and therefore there was not sufficient financial hardship to deny or defer imposition of the rent increases. The tenant appealed the remand decision on the grounds of financial hardship as to the capital improvement passthrough and the operating expense increase. Pursuant to the Moratorium on processing of capital improvement passthroughs, the appeal as to the operating and maintenance expense increase was denied at the meeting on May 15, 2001. In her further appeal as to the capital improvement passthrough, the tenant claims that: CD accounts in her name are actually held jointly with her sister; interest payments attributed as income to her are not actually received; and her expenses are increasing while her income is decreasing.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

V. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received:

A. A new Commissioners' roster.

B. A copy of Ordinance No. 186-01, which amends the Rent Ordinance to provide for a 6-month period during which landlords may not evict tenants for non-payment of capital improvement passthroughs certified after April 10, 2000, pursuant to petitions filed prior to August 10, 2001.

VI. Old Business

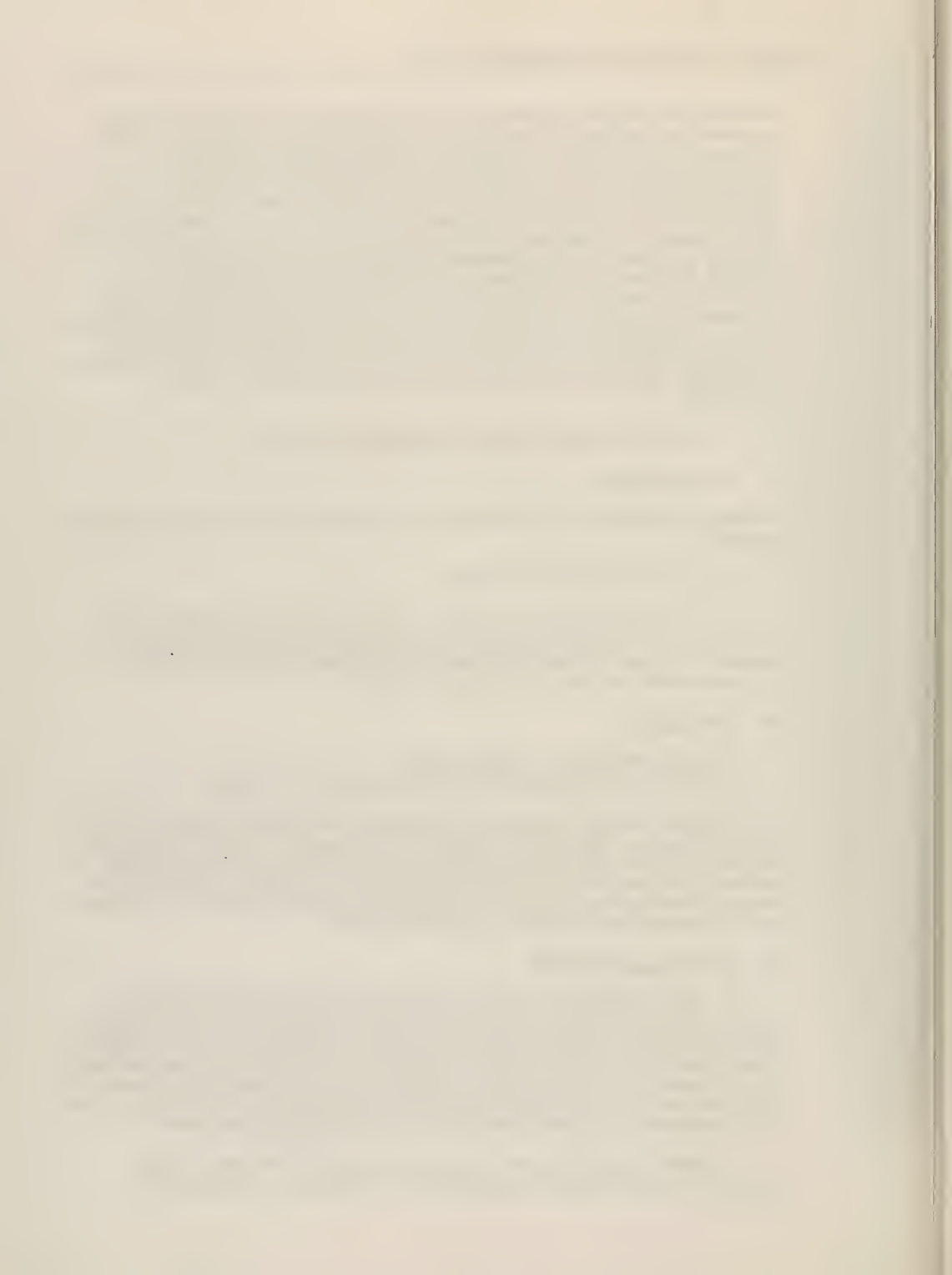
Rules and Regulations Section 6.10(e)
Goodwin v. Rent Board (Superior Court Case No. 317339)

Commissioner Marshall distributed draft language to address the issue raised in the case of Goodwin v. Rent Board (Superior Court Case No. 317339). In that case, the Court found that the landlord was entitled to two operating and maintenance expense increases, one based on his purchase and one based on the increased property taxes incurred by the estate after the death of the prior owner. This issue will be discussed at the October 2nd Board meeting.

VII. Remarks from the Public

A. Will Anzenberger, Director of Law & Advocacy for the San Francisco SPCA, made some remarks regarding the Board's consideration of the appeal at 2333 Market St. (AT010132), and the issue of rent increases for pets as additional housing services. Mr. Anzenberger expressed his concern that, if tenants fear that rent increases will result, they will "go underground" and not report the presence of a pet to the landlord. Mr. Anzenberger offered the services of his organization to the Commissioners in formulating future policies regarding pets in rental units.

B. Marc Goldsmith, the tenant in the case at 902 Divisadero St. #202 (AL010134), read a statement alleging that his landlord committed perjury in



asserting that he did not receive the notice of hearing, and asking that the Board not grant the landlord's appeal.

VIII. New Business

President Wasserman wished everyone a safe and happy Jewish New Year.

IX. Calendar Items

September 25, 2001 - NO MEETING

October 2, 2001

8 appeal considerations (1 rescheduled from 9/18/01)
Rules & Regulations Section 6.10(e)

X. Adjournment

President Wasserman adjourned the meeting at 7:38 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
October 2, 2001

25 Van Ness Avenue, #70, Lower Level

POLLY MARSHALL
VICE-PRESIDENT

AGENDA

DOCUMENTS DEPT.

- KHIN MAI AUNG
- LARRY BEACH BECKER
- DAVID GUSTAV GRUBER
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- ANTHONY JUSTMAN
- MERRIE T. LIGHTNER
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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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- V. Consideration of Appeals

A. 1108 Fulton St. AT010135 & AL010137
(rescheduled from 9/18/01)

The landlords and tenant appeal the decision granting claims of decreased housing services.

B. 1320, 1340, 1360 Lombard St. AT010052 thru-89

Thirty-eight tenants appeal the decision partially granting certification of capital improvement costs.

C. 1515 Sutter #253 AT010138

The tenant, the prior resident manager of the building, appeals the decision determining that his base rent is lawful.

D. 572 San Jose Ave. AT010141

The tenant appeals the decision granting a rent increase based on increased operating expenses on the grounds of financial hardship.

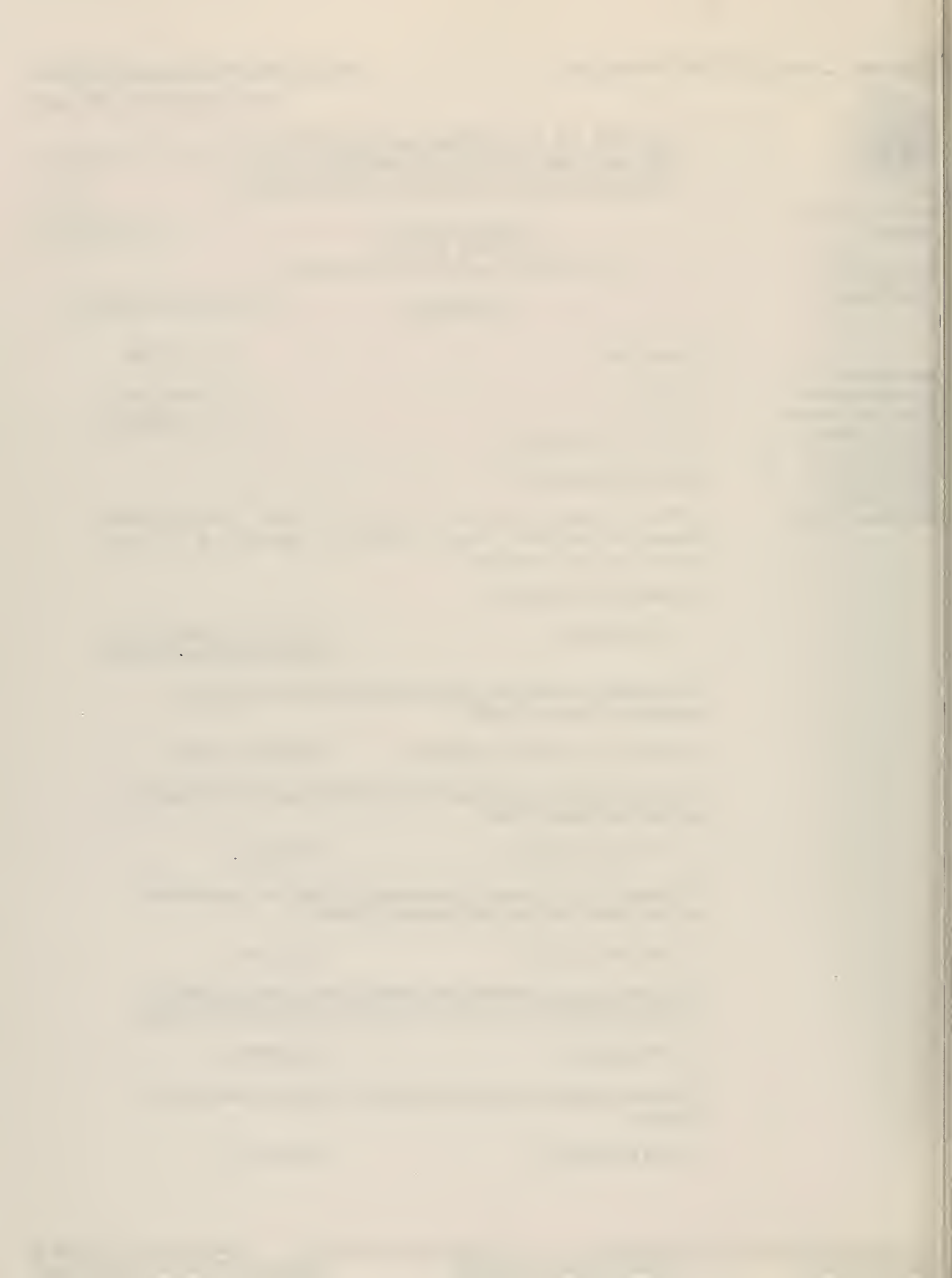
E. 172 Day St. AL010139

The landlord appeals the decision granting a claim of unlawful rent increases.

F. 459 Sanchez St. AL010143

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The landlord appeals the decision granting a claim of unlawful rent increase pursuant to Costa-Hawkins.

G. 1733 Golden Gate Ave.

AT010142

The tenants appeal the remand decision denying a claim of unlawful rent increase because the property is exempt as new construction.

H. 1945 Pacific Ave.

AL010140

The landlord appeals the decision granting a claim of unlawful rent increase pursuant to Costa-Hawkins.

VI. Communications

VII. Director's Report

VIII. Old Business

Rules and Regulations Section 6.10(e)

Goodwin v. Rent Board (Superior Court Case No. 317339)

IX. Remarks from the Public (cont.)

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SHARON K. WASSERMAN
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POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, October 2, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

I. Call to Order

OCT 12 2001

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Vice-President Marshall called the meeting to order at 6:16 p.m.

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II. Roll Call

Commissioners Present:

Aung; Becker; Gruber; Justman; Marshall;
Mosser; Murphy.

Commissioners not Present:

Hobson; Lightner; Wasserman.

Staff Present:

Gartzman; Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of September 18, 2001.
(Gruber/Becker: 5-0)

IV. Remarks from the Public

A. Tenant Bill Shockley of Lombard Place Apartments (AT010052 thru -89) reminded the Board that there has never been a project before them of this size; said that the project quadrupled in size; that there was the appearance that the Decision was rushed in order to beat the Moratorium; that the petition had to be substantially amended; that the landlord refused to provide subcontractor invoices; and asked that an hour be spent on oral argument to ensure that the process remains "balanced and fair."

B. Tenant Jose Morales of 572 San Jose Ave. (AT010141) told the Board that he has been a tenant in San Francisco for over twenty-five years and that he is still "waiting for justice." Mr. Morales believes that capital improvement and operating and maintenance rent increases are "just another way for landlords to get more money from poor people."

C. Tenant Olivia Garcia of 3440 - 25th St. #306 told the Commissioners that she is being "harassed to move out", but that she can't prove it; that the police won't do anything; and that the landlord is neglecting repairs.

D. Attorney Drexel Bradshaw, representing the tenant at 1515 Sutter #253 (AT010138), told the Board that an employment agreement waiving the tenant's rights under the Ordinance is in contravention of the Ordinance; and that a unilateral error on the part of the landlord still serves to set the rent.

E. Jeff Belote, attorney for the tenants at Lombard Place, said that the \$5.4 million in missing invoices impeded the tenants in putting on their case; and that over \$80,000 in mistakes were admitted by the landlord in the amendment to the original petition. Mr. Belote requested an hour or so for oral argument "to do justice to the case."

F. Bob Aune, attorney for the landlord at Lombard Place, informed the Board that the Administrative Law Judge approved less than 75% of the landlord's costs in the Decision, and made certain factual findings that the landlord disagreed with. However, because there were no errors of law or abuses of discretion, the landlord withdrew its appeal.

V. Consideration of Appeals

A. 1515 Sutter St. #253

AT010138

The tenant filed a petition seeking a determination as to the lawfulness of his base rent. The tenant had vacated his rent controlled apartment at the premises in order to become the resident manager of the building, and had moved to another unit pursuant to an employment contract. In so doing, the Administrative Law Judge found that the tenant became a licensee, rather than a tenant entitled to the protections of the Rent Ordinance. Upon the termination of his employment contract, a new base rent in the amount of \$1,000 per month was found to be lawful. The tenant appeals on the grounds that: the prohibition against a tenant's waiver of rights under the Ordinance is unequivocal and there are no exceptions; the employment agreement did not alter the petitioner's status as a tenant in the building, since he was entitled to the exclusive use and occupancy of the rental unit; upon having been fired without just cause, the tenant should have reverted to his pre-employment status and his rent controlled rent, or landlords will use employment as a pretext to rid themselves of unwanted tenants; and the landlord should be bound by the \$800 rental amount listed on an invoice that was issued after termination of the employment contract.

MS: To deny the appeal. (Murphy/Gruber)

After discussion, it was agreed to continue consideration of this appeal to the October 16th meeting in order for Commissioner Justman to read the case of Chan v. Antepenko (1988 302 Cal.App.3d Supp.21, 25).

B. 572 San Jose Ave.

AT010141

The landlord's petition for a rent increase based on increased operating expenses was granted to the tenant in one unit. The tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

C. 459 Sanchez St.

AL010143

The tenant's petition alleging an unlawful increase in rent from \$1,166.30 to \$1,895.00 was granted, and the landlord was found liable to the tenant in the amount of \$3,643.50. The Administrative Law Judge that the increase was not warranted

pursuant to Costa-Hawkins because the petitioner resided on the premises prior to January 1, 1996 as a tenant, and not a subtenant or assignee. On appeal, the landlord maintains that: the tenant did not pay rent for the unit until January 1, 1996, and therefore was not a tenant prior to that time; the timing of the market rent increase is contingent on the last original tenant having vacated the unit, which would always make the subtenant a tenant, and disallow all otherwise authorized Costa-Hawkins rent increases; mere acceptance of rent does not waive the landlord's right to a market rent increase under the explicit language of Costa-Hawkins; since the landlord received no written notice from the original tenant regarding her having vacated the premises, he cannot be held to have knowledge that she had done so; the annual rent increase given to the petitioner does not preclude the imposition of a market increase pursuant to Costa-Hawkins; and the landlord's right to an unlimited rent increase need not be exercised immediately in order not to be forfeited.

MSC: To deny the appeal. (Becker/Justman: 5-0)

D. 1320, 1340, 1360 Lombard Place

AT010052 thru -89

The landlord's petition sought certification of capital improvement costs totaling \$6,465,799.73 for the installation of new bay roofs, new roof safety rails, re-siding, new boiler flue, and the replacement of windows and exterior waterproofing and painting on 9 out of 12 facades of the 3 buildings in the complex. The total amount certified was \$4,779,895.36. However, the costs of the waterproofing project were certified unconditionally and retroactively only for those units that received new windows and waterproofing of all facades of the building. For those units which received new windows and waterproofing on only 1 of 2 exterior facades, 1/2 of the costs were certified conditionally (prospectively only), and may not be imposed until after the landlord effectively waterproofs and installs new windows on the unrepaired facades. For those units which received no new windows or waterproofing, the entire cost of the waterproofing work was certified conditionally, and may not be passed through unless and until the landlord effectively waterproofs the 2 unrepaired facades, including the installation of new windows.

The tenants in 36 units appealed the decision; 33 of those tenants are represented by the same attorney, and filed a joint appeal. The tenants in 8 units filed individual appeals; 3 on the grounds of financial hardship. The tenants jointly appeal on the following grounds: the landlord failed to meet its burden of proof; the decision is contrary to the Ordinance and public policy; the rent increases should not be retroactive, since the petition was not complete when it was filed, and should have been administratively dismissed; the tenants were denied access to \$5.7 million in subcontractor invoices that were submitted to the general contractor; the burden of proving deferred maintenance should not have been placed on the tenants; the current owner was responsible for compounding the problems that originated prior to their purchase, and therefore the deferred maintenance objection should apply; the deferred maintenance of the landlord contributed to lead hazard remediation, which should bar the passthrough; the waterproofing project was in the nature of repair, and did not constitute capital improvements; since there are still habitability problems related to inadequate weatherproofing in many of the units, the work did not benefit the tenants; an improper imputed rate of interest was applied; the costs were inflated and some of the work was unnecessary; and there are mathematical errors in the decision.

As to the individual appeals, the tenants in units #101 and 501 additionally assert that: their units did not receive any new waterproofing or new windows, did not

benefit at all from the project, and therefore the costs should not have even been conditionally certified to them; security was provided because of the waterproofing project, from which they did not benefit; the passage of Proposition H should preclude the granting of this petition; the work was done as the result of numerous cited code violations; and the decision not to dismiss the landlord's petition was made by a Senior Administrative Law Judge, rather than the Administrative Law Judge who heard the case, which constituted a lack of due process. The tenant in unit #601 echoes the arguments in the joint appeal, in addition to raising the due process claim of the tenants in 101 and 501; questions the effective date of the Moratorium legislation prohibiting the processing of capital improvement petitions; and asserts that, since the landlords waited 5 years before commencing the waterproofing project, their costs should be reduced by 20%. The tenants in unit #104 raise the due process issue, including the fact that the Administrative Law Judge did not have subpoena power. The tenants in units number 104, 606 and 604 appeal on the grounds of financial hardship.

MSC: To accept the appeal for further briefing and oral argument before the Board on whether Civil Code Section 823 preempts Rules and Regulations Section 7.15(a), which precludes the current owner's liability for deferred maintenance of the prior owner when deferred maintenance is raised as a defense to a capital improvement passthrough under Rules and Regulations Section 7.15(a). (Becker/Marshall: 5-0)

MSC: To accept the appeal for further briefing and oral argument before the Board on whether the tenants have the burden of proof when asserting deferred maintenance as a defense to a capital improvement passthrough under Rules and Regulations Section 7.15(a). (Becker/Marshall: 3-2; Gruber, Murphy dissenting)

MSF: To accept the appeal for further briefing and oral argument before the Board on whether, because of the facts of this case, the "some other reason" language in Rules Section 7.15(a) bars the passthrough due to long-term deferred maintenance or disallows the portion of the deferred maintenance that is attributable to the current owner. (Becker/Marshall: 2-3; Gruber, Justman, Murphy dissenting)

MSF: To accept the appeal for further briefing and oral argument before the Board on whether, based on the facts of this case, the June 29, 2000 amendment to the landlord's petition should cause the effective date of the capital improvement passthrough to change. (Becker/Marshall: 2-3; Gruber, Justman, Murphy dissenting)

MSF: To accept the appeal for further briefing and oral argument before the Board on whether the Administrative Law Judge's decision not to order the landlord to produce copies of the subcontractor documents constitutes an abuse of discretion or error of law. (Becker/Marshall: 2-3; Gruber, Justman, Murphy dissenting)

The hearing before the Board on the issues that were accepted pursuant to appeal will be held on November 13th at 6:00 p.m. A briefing schedule will be established by the Deputy Director. The individual and hardship appeals filed by eight tenants were also continued to the November 13th meeting.

E. 1108 Fulton St.

AT010135 & AL010137
(rescheduled from 9/18/01)

The tenants' petition alleging substantial decreases in housing services during a period of construction at the property was granted, in part, and the landlords were found liable to the tenants in the amount of \$2,979.00. The landlords and the tenants appeal the decision. In their appeal, the tenants claim: that the work took almost six years, rather than six months, and therefore was not done in a timely manner; that there are factual errors in the decision, including the allegation that the tenants refused relocation to another unit in the building; that the shower leak was major, and rendered the shower unusable; that there is currently no emergency exit from the unit; and that an affidavit from a co-tenant who failed to attend the hearing should be included in the case. The landlords appeal on the grounds that: the utility cut-offs were brief, infrequent and did not interfere with occupancy of the premises, and rent reductions are therefore not warranted pursuant to the court's decision in Golden Gateway; the openings under the kitchen island may have been repaired; the rent reductions granted for the holes in the bathroom wall and defective oven are excessive; the front bathroom window was replaced prior to the issuance of the decision; and the tenants should be held liable in the amount of \$100 per month for a three-month period when they had a "guest" residing on the premises.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to re-open the record to adjust the termination date of the rent reductions for the openings under the kitchen island and replacement of the front bathroom window, if warranted; and to correct any factual errors in the Decision as necessary.
(Becker/Murphy: 4-1; Gruber dissenting)

F. 172 Day St.

AL010139

The landlord's appeal was filed one week late because the landlord had to go to San Jose to deal with a family emergency.

MSC : To find good cause for the late filing of the appeal.
(Gruber/Becker: 5-0)

The tenants' petition alleging unlawful rent increases was granted and the landlord was found liable to the tenants in the amount of \$4,200.00. On appeal, the landlord asserts: that he never threatened the tenants with having to move if they failed to pay the requested increases in rent; that the rental increases were based on expenses incurred by the landlord when the building went through probate; that the tenants agreed to pay the rent increases rather than have the landlord sell the building; that allowable increase amounts should have been offset against the amount of the overpayment; and that the landlord was not informed of his right to file a petition based on increased operating expenses when he phoned the Rent Board for information regarding allowable annual increase amounts.

MSC: To deny the appeal. (Becker/Marshall: 4-1; Gruber dissenting)

G. 1733 Golden Gate Ave.

AT010142

The tenants' petition alleging an unlawful rent increase was granted because the Administrative Law Judge found that the landlord had not proved that the subject unit

is exempt from the Rent Ordinance as new construction. The landlord's appeal was accepted and the original decision was reversed on remand because the Administrative Law Judge found that the unit occupied by the tenants constitutes new construction, and that this is not changed by the fact that a preexisting Victorian structure was moved on top of the tenants' unit from a former location. The tenants appeal the remand decision, asserting that: a Certificate of Final Completion and Occupancy (CCFO) has been issued only for the subject unit, and not for the entire structure, as required by the Ordinance; the Department of Building Inspection had no authority to issue a CCFO for just one unit the building; the documentary evidence does not establish that the subject unit constitutes new construction and a more appropriate conclusion is that the subject unit was moved from the prior location along with the rest of the building; and, although the electric meter was not set until October 22, 1980, the structure was in place prior to the effective date of the Ordinance.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

H. 1945 Pacific Ave.

AL010140

The tenant's petition alleging an unlawful increase in rent from \$1,714.00 to \$3,000.00 was granted, and the landlord was found liable to the tenant in the amount of \$7,574.69. The Administrative Law Judge that the increase was not warranted pursuant to Costa-Hawkins or Rules Section 6.14 because the petitioner was a tenant who had a direct landlord-tenant relationship with the landlord, and was not a subtenant or assignee; and that a 6.14 notice was not served until four years after the landlord knew of the tenant's occupancy. On appeal, the landlord claims that: after the last original tenant has vacated, the subtenant has possession of the entire leasehold and is no longer a subtenant, which would moot all otherwise allowable Costa-Hawkins rent increases; the tenant was not an original tenant in the unit and did not have a written rental agreement with the landlord; the tenant resided in the unit pursuant to an agreement with his roommate, and not with the landlord; acceptance of rent from the tenant cannot operate as a waiver of the landlord's right to an unlimited rent increase under Costa-Hawkins, and the landlord did not receive written notice of the last original tenant's intent to vacate the unit; service of 3-day notices to pay rent or quit and rent increase notices do not serve to create a tenancy; and, since public policy disfavors forfeiture, the landlord did not need to have acted immediately in order not to lose his right to a market rent increase pursuant to Costa-Hawkins.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A letter from tenant John Tunui of 2333 Market regarding the denial of his appeal (AT010747), and questioning whether the Master Tenant at his unit is in violation of Ordinance Section 37.3(c).

B. A Memo from Deputy City Attorney Marie Blits informing the Board that Supervisor Hall has requested that the Rent Ordinance be amended to provide a military service exception to the 36-month OMI residency requirement.

C. A Memo from Deputy City Attorney Marie Blits informing the Board that the California Supreme Court has refused to take or depublish the Decision in Cwynar et al. V. City and County of San Francisco (July 10, 2001) 90 Cal.App.4th 637 {Proposition G}.

VII. Old Business

Rules and Regulations Section 6.10(e)
Goodwin v. Rent Board (Superior Court Case No. 317339)

Commissioner Marshall distributed a re-draft of her proposed amendment to Rules and Regulations Section 6.10(e) to address the issue raised in the case of Goodwin v. Rent Board (Superior Court Case No. 317339). In that case, the Court found that the landlord was entitled to two operating and maintenance expense increases, one based on his purchase and one based on the increased property taxes incurred by the estate after the death of the prior owner. Commissioner Marshall's proposed amendment makes it clear that only the owner who incurred the increase in expenses can file a petition for rent increase based on those expenses.

MSC: To put the proposed amendment to Rules and Regulations Section 6.10(e) out for Public Hearing. (Becker/Murphy: 5-0)

The Public Hearing will be held on October 16th at 6:30 p.m. The proposed amendment reads as follows (new language underlined):

6.10(e) If a building is refinanced or there is a change in ownership resulting in increased debt service and/or property taxes, only the landlord who incurred such increased expenses may file a petition under this Section, and only one rent increase per unit based upon increases in debt service and/or property taxes shall be allowed for each such refinance or transfer, except in extraordinary circumstances or in the interest of justice.

VIII. New Business

Commissioner Marshall suggested that the Board once again consider the idea of allowing hardship appeals to capital improvement passthroughs upon the phase-in of accumulated amounts in successive years.

IX. Calendar Items

October 9, 2001 - NO MEETING

October 16, 2001

8 appeal considerations (1 cont. from 10/2/01)

6:30 Public Hearing: Amendments to Rules and Regulations Section 6.10(e)

October 23, 2001 – NO MEETING

October 30, 2001

10 appeal considerations

November 6, 2001 – NO MEETING (Election Day)

November 13, 2001

6:00 Appeal Hearing: 1320, 1340, 1360 Lombard St. (AT010052 thru -89)

X. Adjournment

Vice-President Marshall adjourned the meeting at 9:00 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,

October 16, 2001

25 Van Ness Avenue, #70, Lower Level

DOCUMENTS DEPT.

AGENDA

OCT 12 2001

SAN FRANCISCO
PUBLIC LIBRARY

- KHIN MAI AUNG**
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY
- I. Call to Order
II. Roll Call
III. Approval of the Minutes
IV. Remarks from the Public

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 1515 Sutter St. #253

AT0010138
(cont. from 10/2/01)

The tenant, the prior resident manager of the building, appeals the decision determining his base rent to be lawful.

B. 910 Bay St., Apt. 6

AT010146

The tenant appeals the decision granting a claim of decreased housing services, asserting that he should have been granted replacement value for his garage.

C. 2188 Sutter St.

AL010147

The landlord appeals the decision granting claims of decreased housing services.

D. 895 Sutter #512

AT010148

The tenants appeal the dismissal of their petition alleging decreased housing services due to their failure to appear at the hearing.

E. 3792 - 21st St.

AT010149

The tenant appeals the decision denying his claim of decreased housing services.

F. 858 Filbert St. #3

AL010150

The landlord appeals the decision partially granting a claim of decreased housing services and deferring an annual increase due to a failure to repair.

G. 614 & 620 Cole St.

AL010151

The landlord appeals the dismissal of his petition for certification of capital improvement costs due to his failure to appear at the hearing.

H. 365 Bay #3

AT010152

The tenant appeals the dismissal of her petition alleging decreased housing services due to her failure to appear at the hearing.

VI. Public Hearing

6:30 Proposed Amendment to Rules and Regulations Section 6.10(e)
Goodwin v. Rent Board (Superior Court Case No. 317339)

VII. Communications

VIII. Director's Report

IX. Old Business

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business .

XI. Calendar Items

XII. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

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Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheel-chair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, October 16, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

OCT 26 2001

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:15 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Justman; Lightner;
Marshall; Wasserman.
Commissioners not Present: Hobson; Mosser.
Staff Present: Grubb; Wolf.

Commissioner Murphy appeared on the record at 6:19 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 2, 2001.
(Gruber/Becker: 5-0)

IV. Consideration of Appeals

A. 910 Bay St., Apt. 6

AT010146

The tenant filed a petition alleging decreased housing services because of the loss of use of his parking and storage space in the building. The Administrative Law Judge denied the petition, finding that the \$55.00 rent reduction given the tenant by the landlords was a reasonable valuation for the lost services. The tenant appeals, claiming that: the landlords are not using the space themselves, as found by the Administrative Law Judge; replacement value for the parking space alone in the Fisherman's Wharf neighborhood would be \$200 to \$250; and compensation based on 1977 rates is unrealistically low.

MSC: To deny the appeal, however, the tenant may re-file the petition should he have facts to show that the space is no longer being used by the landlord. (Lightner/Gruber: 4-1; Marshall dissenting)

B. 1515 Sutter St. #253

AT010138
(cont. from 10/2/01)

The tenant filed a petition seeking a determination as to the lawfulness of his base rent. The tenant had vacated his rent controlled apartment at the premises in order to become the resident manager of the building, and had moved to another unit



pursuant to an employment contract. In so doing, the Administrative Law Judge found that the tenant became a licensee, rather than a tenant entitled to the protections of the Rent Ordinance. Upon the termination of his employment contract, a new base rent in the amount of \$1,000 per month was found to be lawful. The tenant appeals on the grounds that: the prohibition against a tenant's waiver of rights under the Ordinance is unequivocal and there are no exceptions; the employment agreement did not alter the petitioner's status as a tenant in the building, since he was entitled to the exclusive use and occupancy of the rental unit; upon having been fired without just cause, the tenant should have reverted to his pre-employment status and his rent controlled rent, or landlords will use employment as a pretext to rid themselves of unwanted tenants; and the landlord should be bound by the \$800 rental amount listed on an invoice that was issued after termination of the employment contract.

At the October 2nd meeting, a motion to deny the appeal was made by Commissioner Murphy and seconded by Commissioner Gruber. However, after discussion, it was agreed to continue the case to the next meeting in order for Commissioner Justman to read the case of Chan v. Antepenko (1988 302 Cal.App.3d Supp. 21, 25).

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Gruber/Becker: 5-0)

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Becker, Marshall dissenting)

C. 2188 Sutter St.

AL010147

The tenant's petition alleging substantial decreases in housing services was granted, and the landlord was found liable to the tenant in the amount of \$2,464.00 due to habitability defects on the premises. On appeal, the landlord claims that: he was unable to make the necessary repairs while the tenant remained in the unit, since structural changes to the unit were required, and water and electricity would be temporarily disconnected; the tenant has not paid rent since December of 2000; and the landlord was out of the country at the time of the hearing and during the period for post-hearing submissions.

MSC: To deny the appeal; the amount that the landlord was found liable for pursuant to the Decision shall be offset against any sums owing from the tenant to the landlord for unpaid rent.
(Becker/Marshall: 5-0)

D. 895 Sutter #512

AT010148

The tenants' petition alleging decreased housing services was dismissed due to their failure to appear at the properly noticed hearing. On appeal, the tenants claim to have misunderstood the Notice of Hearing because they had a relative in from out of town, which caused them to arrive for the hearing one and a half hours late.

MSF: To deny the appeal. (Gruber/Lightner: 2-3; Becker, Marshall, Justman dissenting)

MSC: To accept the appeal and remand the case for a new hearing with instructions that the tenants are not to miss the rescheduled hearing. (Becker/Justman: 4-1; Lightner dissenting)

E. 3792 – 21st St.

AT010149

The tenant's appeal was filed six days late because of the events of September 11th, which exacerbated the tenant's existing health problems.

MSC: To find good cause for the late filing of the appeal. (Marshall/Becker: 5-0)

The tenant's petition alleging decreased housing services because of the rescission by the landlord of his right to use laundry and storage facilities on the premises was denied because the Administrative Law Judge found that these services were not included as part of the tenant's base rent at the inception of the tenancy. The tenant appeals on the grounds that: there was an exchange of services for the use of the laundry and storage facilities which was not taken into consideration by the Administrative Law Judge; the landlords had given him permission to use the facilities for the previous six years; the landlords had retaliatory motives; the Administrative Law Judge was influenced by the fact that the landlords are elderly in assessing credibility; and a prior roommate and witness for the tenant was unable to appear at the hearing.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

F. 858 Filbert St. #3

AL010150

The tenants' petition alleging substantial decreases in housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$185.00 due to a leak in the bathroom. Additionally, an annual rent increase was deferred for one month due to the landlord's failure to make required repairs. On appeal, the landlord claims that: there are factual errors in the decision; the delay in effectuating the repairs was partially caused by the tenants' children being present in the unit and needing to use the bathroom; the leak problem was difficult to diagnose and resolve; there was never a time when the tenants were unable to use the shower; and the inconveniences suffered by the tenants were minor.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

G. 614 & 620 Cole St.

AL010151

The landlord's petition for certification of capital improvement costs to the tenants in six units was dismissed due to the landlord's failure to appear at the properly noticed hearing. The landlord appeals only as to two units, claiming that he did not realize that he had to appear at the hearing, and that he was out of the country at the time of the hearing.

MSC: To accept the appeal and remand the case for a new hearing. (Lightner/Gruber: 5-0)

H. 365 Bay #3

AT010152

The tenant's petition alleging decreased housing services was dismissed because she appeared 1/2 hour late for the hearing. The tenant appeals, claiming that the taxi she was riding in broke down on the day of the hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Gruber: 5-0)

V. Remarks from the Public

A. Whit Ashley, attorney for the landlord involved in the case at 910 Bay St. (AT010146), thanked the Board for their service to the public. Mr. Ashley told the Board that the public policy goals of the Ordinance should be considered when considering the merits of an appeal, in that the tenant in this case is not a low or moderate income individual, and allegedly has a home elsewhere.

B. Jerry Harris, the tenant at 3792 – 21st St. (AT010149), questioned why the Administrative Law Judge found all of his landlords' testimony and evidence credible, but none of his; said that an individual is at a disadvantage before the Board if they can't afford a lawyer; and said that he is willing to take a lie detector test to prove that he was told he could use the washer and dryer on the premises from the day he moved in.

C. The tenants involved in the case at 895 Sutter St. #512 (AT010148) inquired as to the disposition of their appeal.

VI. Public Hearing

Proposed Amendment to Rules and Regulations Section 6.10(e)
Goodwin v. Rent Board (Superior Court Case No. 317339)

A Public Hearing commenced at 7:27 p.m. and concluded shortly thereafter. The only speaker was Michelle Horneff, President of the Professional Property Managers' Association, who inquired as to whether the proposed amendment changed the definition of "landlord" for purposes of operating and maintenance expense increases, and was informed that it did not. Rather, the proposed amendment makes it clear that only an owner who incurred an increase in expenses can file a petition for rent increase based on those expenses. Commissioner Lightner requested that consideration of the proposed amendment be continued to the next meeting, since she was out of the country when it was proposed. It was therefore the consensus of the Board to continue consideration of this proposal under "Old Business" at the October 30th meeting.

VII. Communications

The Commissioners received correspondence concerning cases on the calendar, as well as a copy of the Notice of Public Hearing.

VIII. Calendar Items

October 23, 2001 - NO MEETING

October 30, 2001

10 appeal considerations

Old Business: Amendments to Rules and Regulations Section 6.10(e)

November 6, 2001- NO MEETING (Election Day)

November 13, 2001

1 appeal consideration

6:00 Appeal Hearing: 1320, 1340, 1360 Lombard St. (AT010052 thru -89)

IX. Adjournment

President Wasserman adjourned the meeting at 7:36 p.m.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

See revised
agenda
October 4, 2001

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

NOTICE OF PUBLIC HEARING

DATE: OCTOBER 16, 2001
TIME: 6:30 P.M.
PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA

6/01
KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

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THE COMMISSION IS TAKING PUBLIC COMMENT ON THE ATTACHED LANGUAGE AMENDING SECTION 6.10(E) WHICH IS INTENDED TO CLARIFY THE CURENT POLICY OF PERMITTING ONLY THE OWNER WHO ACTUALLY INCURRED THE EXPENSE OF A REFINANCE OR A NEW PURCHASE DEBT SERVICE TO PETITION UNDER SECTION 6 OF THE RULES AND REGULATIONS. PLEASE NOTE THAT NEW WORDING IS UNDERLINED AND ANY DELETIONS ARE IN DOUBLE BRACKETS [[]].

Section 6.10((e) If a building is refinanced or the is a change in ownership resulting in increased debt service and/or property taxes, only the landlord who incurred such increased expenses may file a petition under this Section and only one rent increase per unit based upon increases in debt service and/or property taxes shall be allowed for each such refinance or transfer, except in extraordinary circumstances or in the interest of justice.

Comments may be mailed and should be **received** at the Rent Board no later than Oct. 10th so that they can be mailed and received by the Commissioners. Comments arriving after this time may not be able to be adequately considered. Comments may also be made in person at the hearing and will be limited to three minutes per person.

City and County of San Francisco



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Residential Rent Stabilization
and Arbitration Board

October 4, 2001

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

REVISED
NOTICE OF PUBLIC HEARING

DATE:	OCTOBER 16, 2001	DOCUMENTS DEPT.
TIME:	6:30 P.M.	OCT - 5 2001
PLACE:	25 VAN NESS AVENUE (AT MARKET ST.) SUITE 70, LOWER LEVEL SAN FRANCISCO, CALIFORNIA	SAN FRANCISCO PUBLIC LIBRARY

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON THE ATTACHED LANGUAGE AMENDING SECTION 6.10(e) TO SPECIFICALLY STATE THAT ONLY THE OWNER WHO ACTUALLY INCURRED THE EXPENSE OF A REFINANCE OR A NEW PURCHASE DEBT SERVICE MAY PETITION FOR A RENT INCREASE UNDER SECTION 6 OF THE RULES AND REGULATIONS. PLEASE NOTE THAT NEW WORDING IS UNDERLINED AND ANY DELETIONS ARE IN DOUBLE BRACKETS [[]].

Section 6.10(e) If a building is refinanced or there is a change in ownership resulting in increased debt service and/or property taxes, only the landlord who incurred such increased expenses may file a petition under this Section and only one rent increase per unit based upon increases in debt service and/or property taxes shall be allowed for each such refinance or transfer, except in extraordinary circumstances or in the interest of justice.

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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,

October 30, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

- I. Call to Order
KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

OCT 26 2001

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NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 3330 Pierce St. #103 AL010145

The landlord appeals the remand decision denying certification of capital improvement work determined to be attributable to deferred maintenance.

B. 1935 Franklin St. #503 AT010153

The tenants appeal the decision granting a rent increase based on comparable rents.

C. 587 - 591 Vermont St. AL010154

The landlord appeals the portion of the decision denying certification of framing and siding replacement costs.

D. 707 Stockton #508, 204, 105 & 307 AL010155;
AT010157 & -66

The landlord and two tenants appeal the decision certifying capital improvement costs.

E. 1053 Oak St., Apt. 203 AT010158

One tenant appeals the decision granting rent increases based on increased operating expenses due to financial hardship.

F. 532 Linden St. AL010159



The landlords appeal the decision determining the proper base rent and refunding rent overpayments.

G. 121 Scott St.

AT010160

One tenant appeals the decision certifying capital improvement costs.

H. 1033 Stryan St.

AT010161 & -62

The tenants in two units appeal the decision certifying capital improvement costs.

I. 1933 Oak St.

AT010163

The tenants in one unit appeal the decision certifying capital improvement costs.

J. 1487 Guerrero St.

AL010164

The landlord appeals the remand decision granting a claim of financial hardship.

VI. Communications

VII. Director's Report

VIII. Old Business

Proposed Amendment to Rules and Regulations Section 6.10(e)
Goodwin v. Rent Board (Superior Court Case No. 317339)

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

ACCESSIBLE MEETING POLICY

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SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, October 30, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

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I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Lightner;
Marshall; Wasserman.
Commissioners not Present: Justman; Mosser; Murphy.
Staff Present: Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of October 16, 2001.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Loren Porter of St. Peter's Housing Committee, the representative for the tenant involved in the hardship appeal at 1487 Guerrero (AL010164), told the Board that the tenant is an elderly, deaf widow who meets all of the hardship requirements; Ms. Porter asked that the Board deny the landlord's appeal and grant the tenant a permanent deferral of the passthrough.

V. Consideration of Appeals

A. 3330 Pierce St. #103

AL010145

The landlord's petition for certification of capital improvement costs to 13 of 21 units was granted, in part. The tenant in unit #103 appealed, alleging, among other things, that the shower work in her unit was necessitated by deferred maintenance. The appeal was accepted and the case was remanded to exclude the parts of the shower remodeling work that were attributable to deferred maintenance. The landlord appeals the remand decision, asserting that: the replacement of the shower constituted capital improvement work, and not repair; the Administrative Law Judge misapplied the Board's policy regarding dry rot, and should only have deducted the cost of replacing the framework where the bottom step was mounted; the parties were not on notice as to the scope of the remand hearing, which went beyond the Board's motion; and the landlord did not have an opportunity to refute post-hearing evidence submitted by the tenant, which formed the basis for the decision. The landlord offers to pay for the services of an independent estimator to determine the

reasonable cost of replacing the wooden framework where the bottom step was mounted.

MSC: To accept the appeal and remand the case in order to allow the landlord to respond to the evidence from the contractor; a hearing will be held only if necessary. (Hobson/Marshall: 5-0)

B. 1935 Franklin St. #503

AT010153

The landlord's petition for a rent increase based on comparable rents was granted, and a rent increase from \$930.00 to \$1,650.00 was granted. Additionally, the landlord was found liable to the tenants in the amount of \$59.52 due to a one-month overpayment in rent. The Administrative Law Judge found that the prior resident manager of the building had approved the tenants' exchanging units in the building at the same rent, but lacked the authority to do so, which constituted fraud or "some other reason" for the tenants' rent having been set low. The tenants appeal, claiming that: they had express permission from the building manager to switch units and the new landlord as successor should be bound by the terms; the tenants should not be prejudiced by the new owner's failure to exercise due diligence regarding the rent levels in the building; the "extraordinary circumstances" and "some other reason" criteria for comparables rent increases are overly broad; they did not have a special relationship with the former owner, nor is their rent set lower than other units in the building; if the tenants had known there was a problem with the prior manager's authority, they would not have switched units; and the retroactive amounts owed present them with a financial hardship.

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Gruber/Lightner: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record with the sense of the Board that there is insufficient evidence that these constitute extraordinary circumstances within the meaning of Rules and Regulations Section 6/11(a)(1). (Marshall/Hobson: 3-1; Gruber dissenting)

C. 587-591 Vermont St.

AL010154

The landlords' petition for certification of capital improvement costs to three units was granted, in part. The landlord appeals the disallowance of \$14,800 in framing and siding replacement costs, asserting that the work was preparatory for the exterior painting, and therefore should be certified as "incidental" to a capital improvement pursuant to Rules and Regulations Section 1.13. The landlord also provides a new invoice, breaking down the labor and material costs for each item.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to consider the landlord's new evidence; a hearing will be held only if necessary. (Gruber/Lightner: 5-0)

D.707 Stockton #508, 204, 105 & 307

AL010155;
AT010157 & -66

The tenant in unit #307 filed her appeal 8 days late, alleging illness and the necessity of making an appointment with a housing counselor.

MSC: To find good cause for the late filing of the appeal.
(Marshall/Hobson: 5-0)

The landlord's petition for certification of capital improvement costs to 40 of 46 units was granted. The tenants in 2 units (#204 & 307) appeal the decision on the grounds of financial hardship. The tenant in unit #105 claims that consideration should have been given to the fact that the landlord had to make the improvements in order to conform the building to habitability standards. The landlord appeals the determination that the 6-Month Rule (Rules and Regulations Section 7.12(b)) precludes imposition of the passthrough to the tenant in unit #508 because the landlord accommodated the tenant by allowing him to change units in the building at the same rent, and the tenant had lived in the building for more than 6 months prior to the improvements having been made.

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Marshall/Gruber: 5-0)

MSC: To deny the appeal of the tenant in unit #105. (Gruber/Lightner:
4-1; Hobson dissenting)

MSC: To accept the appeal of the tenant in unit number 307 and remand the case for a hearing on the tenant's claim of financial hardship.
(Marshall/Hobson: 5-0)

MSC: To accept the landlord's appeal and remand the case to the Administrative Law Judge to allow imposition of the passthrough for exterior painting if the move to another unit in the building was done as an accommodation to the tenant; a hearing will be held only if necessary. (Gruber/Marshall: 5-0)

E. 1053 Oak St., Apt. 203

AT010158

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% base rent increases to 11 of 13 units. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Becker: 5-0)

F. 532 Linden St.

AL010159

The tenant's petition alleging unlawful rent increases and asking for a determination as to the proper base rent was granted, and the landlords were found liable to the tenant in the amount of \$3,645.87. On appeal, the landlords claim that they relied on an estoppel executed by the tenants at the time they purchased the property; that banked increases available to them were in excess of the amount charged; and that a \$75 reduction for timely payment of rent had been discontinued.

Upon a question from Commissioner Lightner as to whether the landlord should have received credit for a banked increase in 1998, this case was continued to the next meeting in order to receive further information from the Administrative Law Judge.

G. 121 Scott St.

AT010160

The tenant's appeal was filed 3 days late due to the disruption of mail service after the September 11th attacks and a death in his family.

MSC: To find good cause for the late filing of the appeal.
(Becker/Marshall: 5-0)

The landlords' petition for certification of the costs of exterior painting and window replacement was granted to the tenants in 4 units. One tenant appeals, claiming that: the old windows were not in need of replacement; the cost of the new windows was not reasonable; the new windows do not provide additional insulation and do not function as efficiently as the old windows; and the landlords have a history of neglecting to make repairs on the building.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Becker, Marshall dissenting)

H. 1031A & 1033 Stanyan St.

AT010161 & -62

The landlord's petition for certification of the costs of a new roof was granted, resulting in a monthly passthrough in the amount of \$73.19 to the tenants in 2 units. The tenants in unit #1033 appeal on the grounds that: the roof was in a dire state of disrepair prior to its replacement; the tenants were affected by flooding for months; and the roof replacement constitutes maintenance and repair, and not capital improvement. The tenant in unit #1031A claims that the roof was not paid for with the landlord's personal funds.

MSC: To deny the appeals. (Lightner/Gruber: 4-1; Becker dissenting)

I. 1933 Oak St.

AT010163

The landlord's petition for certification of capital improvement costs to 8 of 12 units was granted, in part. The tenants in one unit appeal the decision, asserting that: the first contractor had been pulled off the job, which was never explained; scaffolding that was left up for 5-6 weeks adversely affected the quality of life for tenants in the building; the contractors were cited for numerous code violations while the work was being done; and the allocation of costs was done unfairly.

MSC: To deny the appeal. (Lightner/Gruber: 5-0)

J. 1487 Guerrero St.

AL010164

The tenant's hardship appeal of a decision certifying a capital improvement passthrough was granted. The landlord appealed the decision, and the case was remanded with instructions to defer implementation of the passthrough for 90 days in order for the tenant to find a roommate. Upon further appeal by the tenant, the Board again remanded the case to "examine the tenant's expressed language and hearing difficulties and determine whether she can safely obtain a roommate." In the second remand decision, the Administrative Law Judge permanently deferred the passthrough due to the tenant's language and hearing difficulties. On further appeal, the landlord maintains that the tenant ought to avail herself of state, federal or local funds for assistance, including her family; that the tenant could have obtained a roommate, since she resides in a 5-room flat; and that the tenant should be required to pay a portion of the passthrough.

MSC: To deny the appeal unless and until the tenant's circumstances should change, at which time the landlord could petition to re-open the case. (Marshall/Becker: 4-1; Gruber dissenting)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the corrected office workload statistics for the month of September 2001, and a new Commissioners' Roster.

VII. Director's Report

Executive Director Grubb updated the Board on the office's current petition backlog due to the Temporary Moratorium on the processing of capital improvement petitions. It is anticipated that the Moratorium cases will be processed by the end of the year. Petitions being filed now will probably be heard within 3-4 months. Additionally, several Administrative Law Judges have been pulled off of their regular schedules because they are hearing large cases (Lombard and Bay Streets, Parkmerced, etc.), which is also contributing to the backlog. Mr. Grubb also informed the Board that the Rent Board's new website is being rolled out next week, which will make it possible to download forms. The new website will also have a Search Engine; the information will be more readily accessible; and the site will be more aesthetically pleasing.

VIII. Old Business

Proposed Amendment to Rules and Regulations Section 6.10(e)
Goodwin v. Rent Board (Superior Court Case No. 317339)

At the request of Commissioner Lightner, this issue was continued to the December 4th Board meeting.

IV. Remarks from the Public (cont.)

B. Mr. and Mrs. Quigg, the landlords involved in the hardship appeal concerning 1487 Guerro (AL010164), suggested that it would be better for the tenant to have someone live with her, and thanked the Board for leaving the door open should the circumstances change.

IX. Calendar Items

November 6, 2001 - NO MEETING (Election Day)

November 13, 2001

3 appeal considerations (1 cont. from 10/2/01; 1 cont. from 10/30/01)

6:00 Appeal Hearing:

1320, 1340, 1360 Lombard (AT010052 thu -89) (acpt. 10/02/01)

X. Adjournment

President Wasserman adjourned the meeting at 8:00 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

13/01
SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
November 13, 2001
25 Van Ness Avenue, #70, Lower Level

AGENDA

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DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

- A. 1320, 1340, 1360 Lombard St. AT010052, -55, -62, -69,
-72, -74 & -88
(cont. from 10/02/01)

Seven tenants individually appeal the decision partially certifying capital improvement costs, three on the grounds of financial hardship.

- B. 532 Linden St. AL010159
(cont. from 10/30/01)

The landlords appeal the decision determining the proper base rent and refunding rent overcharges.

- C. 178-1/2 Clinton Park AT010167

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

VI. Appeal Hearing:

- 6:00 1320, 1340, 1360 Lombard AT010052 thru -89
(acpt. 10/2/01)

Thirty-three tenants jointly appeal the decision partially granting certification of capital improvement costs.

VII. Communications

VIII. Director's Report

IX. Old Business

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

Petition for Rules and Regulations Section 1.21 Determinations

XI. Calendar Items

XII. Adjournment

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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, November 13, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

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NOV 29 2001

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I. Call to Order

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSEK
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:19 p.m

II. Roll Call

Commissioners Present

Aung; Becker; Hobson; Justman; Lightner;
Marshall; Mosser; Wasserman.

Commissioners not Present.
Staff Present.

Gruber.
Grubb; Verby; Wolf.

Commissioner Murphy appeared on the record at 6:51 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 30, 2001 with a correction to reflect the fact that, in addition to Commissioner Lightner, Commissioner Becker was recused from consideration of the appeal concerning 1935 Franklin St. #503 (AT010153). (Marshall/Becker: 4-0; Lightner abstaining)

IV. Remarks from the Public

Greg Blaine, the landlord involved in the appeal concerning 3330 Pierce St. #103 (AL010145), told the Commissioners that their instructions to the Administrative Law Judge on remand were too vague to address the problem, which he believes is a misinterpretation of the Board's dry rot policy.

V. Appeal Hearing

1320, 1340, 1360 Lombard St.

AT010052 thru -89
(acpt. 10/2/01)

The landlord's petition sought certification of capital improvement costs totaling \$6,465,799.73 for the installation of new bay roofs, new roof safety rails, re-siding, new boiler flue, and the replacement of windows and exterior waterproofing and painting on 9 out of 12 facades of the 3 buildings in the complex. The total amount certified was \$4,779,895.36. However, the costs of the waterproofing project were certified unconditionally and retroactively only for those units that received new windows and waterproofing of all facades of the building. For those units which received new windows and waterproofing on only 1 of 2 exterior facades, 1/2 of the

costs were certified conditionally (prospectively only), and may not be imposed until after the landlord effectively waterproofs and installs new windows on the unrepaired facades. For those units which received no new windows or waterproofing, the entire cost of the waterproofing work was certified conditionally, and may not be passed through unless and until the landlord effectively waterproofs the 2 unrepaired facades, including the installation of new windows.

The tenants in 36 units appealed the decision: 33 of those tenants are represented by the same attorney, and filed a joint appeal. The tenants in 7 units filed individual appeals; 3 on the grounds of financial hardship. The tenants jointly appealed on the following grounds: the landlord failed to meet its burden of proof; the decision is contrary to the Ordinance and public policy; the rent increases should not be retroactive, since the petition was not complete when it was filed, and should have been administratively dismissed; the tenants were denied access to \$5.7 million in subcontractor invoices that were submitted to the general contractor; the burden of proving deferred maintenance should not have been placed on the tenants; the current owner was responsible for compounding the problems that originated prior to their purchase, and therefore the deferred maintenance objection should apply; the deferred maintenance of the landlord contributed to lead hazard remediation, which should bar the passthrough; the waterproofing project was in the nature of repair, and did not constitute capital improvements; since there are still habitability problems related to inadequate weatherproofing in many of the units, the work did not benefit the tenants; an improper imputed rate of interest was applied; the costs were inflated and some of the work was unnecessary; and there are mathematical errors in the decision.

As to the individual appeals, the tenants in units #101 and 501 additionally asserted that: their units did not receive any new waterproofing or new windows, did not benefit at all from the project, and therefore the costs should not have even been conditionally certified to them; security was provided because of the waterproofing project, from which they did not benefit; the passage of Proposition H should preclude the granting of this petition; the work was done as the result of numerous cited code violations; and the decision not to dismiss the landlord's petition was made by a Senior Administrative Law Judge, rather than the Administrative Law Judge who heard the case, which constituted a lack of due process. The tenant in unit #601 echoed the arguments in the joint appeal, in addition to raising the due process claim of the tenants in 101 and 501; questioned the effective date of the Moratorium legislation prohibiting the processing of capital improvement petitions; and asserted that, since the landlords waited 5 years before commencing the waterproofing project, their costs should be reduced by 20%. The tenants in unit #104 raised the due process issue, including the fact that the Administrative Law Judge did not have subpoena power. The tenants in unit numbers 104, 606 and 604 appealed on the grounds of financial hardship.

At the meeting on October 2nd, the Commissioners accepted the tenants' joint appeal for further briefing and oral argument on two issues only: 1) whether Civil Code Section 823 preempts Rules and Regulations Section 7.15(a), which precludes the current owner's liability for deferred maintenance of the prior owner when deferred maintenance is raised as a defense to a capital improvement passthrough under Rules and Regulations Section 7.15(a); and 2) whether the tenants have the burden of proof when asserting deferred maintenance as a defense to a capital improvement passthrough under Rules and Regulations Section 7.15(a). The individual and hardship appeals filed by seven tenants were continued to this evening's meeting.

The appeal hearing commenced at 6:24 p.m., and concluded at 8:20 p.m. Appearing for the landlord were attorneys Robert Aune and Laura Ball; attorney Jeffrey Belote appeared on behalf of the tenants. Mr. Belote began by arguing as follows: it is undisputed that deferred maintenance was proved as to the former and current owners of the building, since code violations existed as late as 1996 or 1997 showing that weatherproofing was needed. Since Section 823 of the Civil Code holds a new owner liable for breaches of a rental agreement, and the warranty of habitability is implied in every rental agreement, Section 7.15(a) conflicts with State law. Rather, construing Section 7.15(a) with Civil Code Section 823 is in accordance with the public policy of providing safe and sanitary housing, since it would encourage landlords to conduct due diligence and repair properties right away. Otherwise, a landlord who buys a building with a long history of deferred maintenance is rewarded by obtaining a lower purchase price and still being allowed to pass on the cost of the improvements. As to the burden of proof, once tenants have proved the existence of deferred maintenance, the burden should shift to the landlord to prove the portion of the cost that is attributable to the current and former owner, which is too onerous a burden to place on tenants.

Mr. Aune then made the following arguments: Civil Code Section 823 applies only to remedies for breaches of a rental agreement under State law, to ensure that the transfer of title will not disturb the lease agreement. Section 7.15(a) of the Regulations does not create remedies for breach of a rental agreement but, rather, is a defense to a capital improvement passthrough. Any remedies that tenants have based on breach of the implied warranty of habitability remain undisturbed by Rules Section 7.15(a) and, in fact, the tenants have availed themselves of certain of these remedies. Unless the intention of the State legislature to fully occupy the field is demonstrated, which is not the case here, there is no preemption. The burden of proof being placed on the tenants is supported by Rules Section 11.18 and Evidence Code Section 500, which cannot be changed by Municipal Ordinance. Mr. Aune maintained that the work was not necessitated by deferred maintenance, as these windows were in place for 65 years; said that the decision is correct based on the law that is currently in effect; and asked that the Board not overturn their "well-balanced" regulations.

After engaging in questioning of the attorneys and discussion, the Board voted as follows regarding the joint appeals:

MSC: To deny the appeals and uphold the Decision of the Administrative Law Judge, except to remand the case for certain technical corrections. (Lightner/Mosser: 3-2; Becker, Marshall dissenting)

As to the individual appeals, the Board voted as follows below:

MSC: To accept the appeals of the tenants in unit numbers 104 and 606 at 1340 Lombard and 604 at 1360 Lombard and remand the cases for a hearing on the tenants' claims of financial hardship. (Mosser/Lightner: 5-0)

MSC: To deny the appeal of the tenant in unit #601 at 1340 Lombard St. (Lightner/Mosser: 4-1; Becker dissenting)

MSC: To deny the appeal of the tenants in unit #104 at 1360 Lombard St. (Lightner/Mosser: 4-1; Becker dissenting)

MSC: To deny the appeals of the tenants in unit numbers 101 and 501 at 1320 Lombard St. (Lightner/Mosser: 3-2; Becker, Marshall dissenting)

VI. Consideration of Appeals

A. 532 Linden St

AL010159
(cont. from 10/30/01)

The tenant's petition alleging unlawful rent increases and asking for a determination as to the proper base rent was granted, and the landlords were found liable to the tenant in the amount of \$3,645.87. On appeal, the landlords claim that they relied on an estoppel executed by the tenants at the time they purchased the property; that banked increases available to them were in excess of the amount charged; and that a \$75 reduction for timely payment of rent had been discontinued. Upon a question from Commissioner Lightner as to whether the landlord should have received credit for a banked increase in 1998, this case was continued in order to receive further information from the Administrative Law Judge.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

B. 178-1/2 Clinton Park

AT010167

The tenant's appeal was filed eleven days late because the tenant was away on family business at the time the decision was mailed.

MSC: To find good cause for the late filing of the appeal.
(Becker/Marshall: 5-0)

The landlord's petition for certification of capital improvement costs to three of three units was granted, in part. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Lightner: 5-0)

VII. Director's Report

Executive Director Grubb informed the Board that the agency's new web site is up and running, and encouraged the Commissioners to pay it a visit and provide any comments they may have on how to improve it.

VIII. New Business

Petition for Rules and Regulations Section 1.21 Determinations

In response to certain objections raised by Attorney Clifford Fried, Deputy Director Wolf went over the petition form developed by staff for landlords' use in requesting determinations pursuant to Rules Sections 1.21 and/or 6.14, as well as Costa-Hawkins. Ms. Wolf explained that, while landlords are required to file for a 1.21 determination prior to issuing a rent increase on this basis, they are not required to file

for rent increases pursuant to 6.14 or Costa-Hawkins. However, as there are often subtenants on the premises, prevailing on a 1.21 claim does not necessarily result in a landlord being granted a rent increase, unless the subtenants are eligible for rent increases pursuant to 6.14 or Costa-Hawkins. Upon the landlord's issuance of a 6.14 or Costa-Hawkins increase to the subtenant(s), a petition alleging unlawful rent increase may result. Therefore, staff has provided landlords with the option of requesting determinations on all of their possible claims at the same time. The petition may also be used for 6.14 and/or Costa-Hawkins determinations in the absence of a 1.21 claim. In order to address some of Mr. Fried's concerns, and to clarify certain ambiguities, Commissioner Lightner volunteered to work on re-drafting the petition form.

IX. Calendar Items

November 20 & 27, 2001 - NO MEETINGS

December 4, 2001

10 appeal considerations

Old Business

A. Proposed Amendment to Rules Section 6.10(e)

B. Petition for Rules Section 1.21 Determinations

X. Adjournment

President Wasserman adjourned the meeting at 9:20 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
December 4, 2001
25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

NOV 29 2001

SAN FRANCISCO
PUBLIC LIBRARY

- KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY
- I. Call to Order
II. Roll Call
III. Approval of the Minutes
IV. Remarks from the Public

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 237 Steiner St. #2 AT010165

One tenant appeals the decision granting certification of capital improvement costs.

B. 1671 Lombard St. AL010168;
AT010169 & -70

The landlord appeals the determination that notices of rent increase based on increased operating expenses are null and void; two tenants appeal the decision on the grounds of financial hardship.

C. 868 Valencia #24 AT010171

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to appear at the hearing.

D. 34 - 6th St. #433 AT010172

The tenant appeals the dismissal of his petition alleging decreased housing services due to his failure to appear at the remand hearing.

E. 1566 Church St. AL010174

The landlord appeals the decision granting claims of decreased housing services.



F. 858 Filbert St. #3

AL010173

The landlord appeals the decision granting a claim of unlawful rent increase due to additional occupants in the unit.

G. 1959 Oak St. #4

AT010175

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

H. 3435 Cesar Chavez Ave. #336

AT010176

The tenant appeals the decision determining lack of jurisdiction pursuant to the new construction exemption.

I. 1108 Fulton St

AT010178

The tenant appeals the remand decision partially granting claims of decreased housing services.

J. 3715 Scott St

AL010177

The landlord appeals the decision finding that a rent increase was not warranted pursuant to Rules Section 6.14 or Costa-Hawkins.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed Amendment to Rules and Regulations Section 6.10(e)
(Goodwin v. Rent Board (Superior Court Case No. 317339))

B. Petition for Rules & Regulations Section 1.21 Determinations

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



MINUTES OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

WILLIE L. BROWN, JR.

MAYOR

JOSEPH GRUBB

EXECUTIVE DIRECTOR

SHARON K. WASSERMAN

PRESIDENT

POLLY MARSHALL

VICE-PRESIDENT

Tuesday, December 4, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT

I. Call to Order

DEC 13 2001

KHIN MAI AUNG

LARRY BEACH BECKER

DAVID GUSTAV GRUBER

FREDERICK HOBSON

ANTHONY JUSTMAN

MERRIE T. LIGHTNER

NEVEO MOSSER

BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:05 p.m.

SAN FRANCISCO
PUBLIC LIBRARYII. Roll Call

Commissioners Present:

Becker; Gruber; Lightner; Mosser;
Wasserman.

Commissioners not Present:

Aung; Hobson; Justman.

Staff Present:

Grubb; Wolf.

Commissioner Murphy appeared on the record at 6:11 p.m.; Commissioner
Marshall arrived at the meeting at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 13, 2001.
(Becker/Lightner: 4-0)

MSC: To recuse Commissioner Lightner from discussion of the next item.
(Lightner/Murphy: 4-0)

MSC: To amend the October 30, 2001 Minutes to reflect that, at the end
of the discussion of the case at 1935 Franklin St. #503
(AT010153), Commissioner Gruber requested that consideration
of the appeal be continued in order for there to be five voting
Board members present. His request was not granted.
(Gruber/Wasserman: 4-0)

IV. Consideration of Appeals

A. 237 Steiner St. #2

AT010165

The landlords' petition for certification of capital improvement costs to the tenants in
three of eight units was granted. The tenant in one unit appeals the decision,
asserting that: the improvements were done to appeal to a wealthier class of
tenants; and the dry rot replacement was necessitated by the current landlord's
deferred maintenance.

MSC: To deny the appeal. (Gruber/Lightner: 4-0)

B. 858 Filbert St. #3

AL010173

The tenant's petition alleging an unlawful rent increase was granted and the landlord was found liable to the tenant in the amount of \$9,825.22 due to a \$200 rent increase issued because the tenant's husband and three children moved in to the unit. On appeal, the landlord argues that: the Administrative Law Judge exhibited bias against the landlord; the rent increase was not unlawful because the tenant had breached the provision of the rental agreement requiring the landlord's consent for subletting; the presence of additional occupants in the unit cause the landlord to provide increased housing services; the landlord is being denied a constitutional fair rate of return; there is an arithmetic error in the decision; and the result of an appeal in a related case may affect the amounts owed.

MSC: To deny the appeal, except to remand the case to the
Administrative Law Judge for a numerical correction.
(Becker/Marshall: 5-0)

C. 3435 Cesar Chavez #336

AT010176

The tenant's petition alleging unlawful increases in rent was denied. The building, which consists of artists' live/work spaces, was determined to be exempt from Rent Ordinance limitations as new construction pursuant to a decision issued in 1981. The Administrative Law Judge found that this unit constitutes an exempt newly constructed rental unit pursuant to Ordinance Section 37.2(r) because this case involves the same building and the same issue as the prior case. On appeal, the tenant asserts that: the case of Da Vinci v. Rent Board is applicable and held that the filing of a Certificate of Occupancy after the effective date of the Rent Ordinance does not exempt a unit from the Ordinance if the unit was occupied as a residence prior to that date; there is no valid reason to distinguish the facts of Da Vinci from this case, since in both instances, the issuance of the Certificate of Occupancy did not create new units, but merely legalized existing residential use; the construction of the residential units at the complex was not motivated by the promise of exemption from the Ordinance, and only an unforeseen delay in the construction resulted in the Certificate of Occupancy being issued after June 13, 1979; the prior Rent Board decision was overruled by the holding in Da Vinci; and finding that the unit is subject to the Rent Ordinance is in keeping with the Board's prior Policy Directives regarding live/work tenancies.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Becker, Marshall
dissenting)

D. 1108 Fulton St.

AT010178

The tenants' petition alleging decreased housing services was granted, in part, and the landlords were found liable to the tenants in the amount of \$2,979.00 due to the loss of housing services during a period of construction on the property. The landlords and tenants appealed the decision. The tenants' appeal was granted only to correct certain factual errors in the decision; the landlords' appeal was accepted only to adjust the termination dates of rent reductions granted for openings under the kitchen island and replacement of the front bathroom window, if warranted. In the decision on remand, the Administrative Law Judge determined that no rent reduction was warranted for the window, since the landlord had immediately responded to the problem; and adjusted the amounts owed due to the kitchen island openings having been corrected. The tenants again appeal, claiming that: the work was not performed in a timely manner and the tenants' claims that were denied in the original

decision should be taken into account; and the holes in the front bathroom and kitchen island have never been repaired.

MSC: To accept the appeal and remand the case to the Administrative Law Judge only to determine whether the kitchen island gap has been repaired; a hearing will be held only if necessary.
(Marshall/Becker: 5-0)

E. 3715 Scott St.

AL010177

The tenant's petition alleging an unlawful increase in rent from \$1,625.00 to \$2,500.00 was granted because the Administrative Law Judge found that the tenant was a co-tenant and not a sub-tenant, and therefore no increase was warranted pursuant to Costa-Hawkins; and the landlord did not timely serve a 6.14 notice upon the tenant. On appeal, the landlord argues that: he served a 6.14 notice upon the tenant within a reasonable amount of time after learning of her presence in the unit, because he never received written notice from the original tenant that he would be vacating the premises; a Federal Express receipt does not constitute proof as to when the tenant's rental application was actually mailed; the tenant's last name and bank are the same as the prior tenant's, so her rent checks did not serve to provide actual notice to the landlord; oral notice was timely given to the tenant as to her status pursuant to Rules Section 6.14; and the increase is also justified under Costa-Hawkins because the tenant was always considered and treated as a subtenant by the landlord.

MSF: To deny the appeal. (Marshall/Becker: 2-3; Gruber, Lightner, Wasserman dissenting)

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record with instructions to vacate the decision and find that the 6.14 notice was timely served. (Lightner/Gruber: 3-2, Becker, Marshall dissenting)

F. 1671 Lombard St.

AL010168;
AT010169 & -70

The landlords' petition for rent increases based on increased operating expenses to 9 of 12 units was granted. However, it was determined that the operating and maintenance expense portion of rent increase notices issued prior to the filing of the petition were null and void. The tenants in two units appeal the decision on the grounds of financial hardship. The landlord also appeals, contending that the original date on the notices of rent increase had subsequently been corrected to a date subsequent to the filing of the petition.

MSC: To accept the landlord's appeal and remand the case to the Administrative Law Judge on the issue of the effective date of the operating and maintenance expense increases; a hearing will be held only if necessary. (Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenant in unit #10 and remand the case for a hearing on the tenant's claim of financial hardship.
(Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenants in unit #11 and remand the case for a hearing on the tenants' claim of financial hardship.
(Becker/Marshall: 5-0)

G. 868 Valencia #24

AT010171

The tenant's petition alleging decreased housing services was dismissed due to the tenant's failure to appear at the properly noticed hearing. On appeal, the tenant claims to have missed the hearing because he had to speak to an inspector on the day of the hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Marshall: 5-0)

H. 34 – 6th St. #433

AT010172

The tenant's petition alleging decreased housing services was dismissed due to his failure to appear at the properly noticed hearing. The tenant, who had vacated the premises, maintained on appeal that he did not receive the notice of hearing. The appeal was accepted and the case was remanded for another hearing. The tenant appeared one hour late for the remand hearing, after his petition had been dismissed. The tenant appeals the dismissal on remand, claiming that he arrived one hour late for the hearing because he had to go home and get the notice of hearing, which had the room number on it.

MSC: To deny the appeal. (Lightner/Gruber: 3-2;
Becker, Marshall dissenting)

I. 1566 Church St.

AL010174

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,398.00. On appeal, the landlord alleges that: the tenant's deceased husband had stated that he would attach the door to the freezer; leaks in the unit were corrected and do not constitute an on-going condition; the windows were not in working condition prior to the inception of the tenancy; the rent reductions granted are arbitrary; the tenant has failed to provide access to the unit in order for repairs to be effectuated; and the tenant has not dealt with the landlord in good faith.

MSC: To accept the appeal and remand the case for a new hearing.
(Lightner/Gruber: 5-0)

J. 1959 Oak St. #4

AT010175

The landlords' petition for certification of capital improvement costs to the tenants in six units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Wasserman/Lightner: 5-0)

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Murphy: 5-0)

V. Remarks from the Public

A. The tenant appellant involved in the case at 1108 Fulton (AT010178) asked how the Board could have considered the landlord's completion of the work timely, when it took over two years.

B. The tenant appellee in the case concerning 3715 Scott Street (AL010177) said that the Notice of Consideration of Appeal didn't make it clear that the Decision of the Administrative Law Judge could be overturned by Board action at this evening's meeting; and that the landlord had known that she was residing at the unit, and accepted her as a tenant.

VI. Communications

The Commissioners received the office workload statistics for the month of October.

VII. Director's Report

Executive Director Grubb informed the Board that the staff party, to which they are all invited, will be held at Don Ramon's restaurant from noon to 1:30 on Tuesday, December 18th. The Board party will be at Hayes Street Grill at 8:00 p.m. after the meeting on the night of the 18th.

VIII. Old Business

- A. Proposed Amendment to Rules and Regulations Section 6.10(e)
Goodwin v. Rent Board (Superior Court Case No. 317339)

The Board continued their discussion of a proposed amendment to Rules Section 6.10(e), pursuant to the Public Hearing held on October 16th. The proposed language would make it clear that only an owner who incurred an increase in expenses can file a petition for rent increase based on those expenses. Commissioner Lightner voiced her concern that estates can't petition for increases based on the property tax reassessment triggered by the death of the owner because it takes so long for the supplemental tax bill to be issued by the City. She made it clear that she is concerned about protecting a prior owner who wants an increased sales price but is precluded from filing due to not having received the bill, and not an owner who had the bills and could have filed. To that end, Commissioner Lightner outlined three possible approaches to the problem: 1) allow the new owner to file for the increase when the bill comes in, even if it is late, because the estate wasn't able to file; 2) allow the estate to file and amend the petition later, after the bill is received; or 3) allow the estate to petition for property tax increases not yet received or paid, but which could be calculated pursuant to the applicable formula. After discussion, the consensus of the Board was that option number 3 was the most appropriate and Commissioner Lightner volunteered to draft language to be discussed at the January 8th meeting.

- B. Petition for Rules and Regulations Section 1.21 Determinations

This issue was continued to the January 8, 2002 Board meeting.

IX. New Business

Commissioner Marshall asked that the Board consider amending the Rules and Regulations to allow tenants to file appeals for hardship deferrals of capital improvement passthroughs in subsequent years, upon the phase-in of accumulated amounts in excess of the initial 10%. Commissioner Marshall is concerned that tenants facing large capital improvement passthroughs, such as those at the Lombard Place Apartments, will be facing displacement in the next few years. While there is a consensus among the Commissioners in support of this proposal, several Board members felt that it would be unwise for the Rent Board to enact a partial legislative fix to problems associated with capital improvement passthroughs while Proposition H settlement negotiations are ongoing.

X. Calendar Items

December 11, 2001 - NO MEETING

December 18, 2001
6 appeal considerations

XI. Adjournment

President Wasserman adjourned the meeting at 8:15 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
December 18, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

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DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 1775-77 Yosemite/ 1760-70 Armstrong AL010182

The landlord appeals the decision determining that these live-work units are covered rental units subject to the Rent Ordinance.

B. 735 Geary St., Apt. 504 AT010179

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 1959 Oak St. #2 AL010181

The landlord appeals the remand decision deferring the imposition of a rent increase based on increased operating expenses.

D. 550 Leavenworth #2 AT010180

The tenants appeal the decision partially granting claims of decreased housing services.

E. 857 Clay St. #217 & 305

The tenants in two units appeal the decision granting rent increases based on comparable rents.

F. 1411 Golden Gate AL010183



The landlord appeals the decision finding a rent increase unwarranted pursuant to Costa-Hawkins.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- IX. New Business
- X. Calendar Items
- XI. Adjournment

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American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory), Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



**AMENDED NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
December 18, 2001

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

DEC 18 2001

SAN FRANCISCO
PUBLIC LIBRARY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 1775-77 Yosemite/ 1760-70 Armstrong AL010182

The landlord appeals the decision determining that these live-work units are covered rental units subject to the Rent Ordinance.

B. 735 Geary St., Apt. 504 AT010179

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 1959 Oak St. #2 AL010181

The landlord appeals the remand decision deferring the imposition of a rent increase based on increased operating expenses.

D. 550 Leavenworth #2 AT010180

The tenants appeal the decision partially granting claims of decreased housing services.

E. 857 Clay St. #217 & 305

The tenants in two units appeal the decision granting rent increases based on comparable rents.

F. 1411 Golden Gate AL010183



The landlord appeals the decision finding a rent increase unwarranted pursuant to Costa-Hawkins.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.10(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- IX. New Business
 - "House Rules" Petitions for Single Room Occupancy Hotels
- X. Calendar Items
- XI. Adjournment



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, December 18, 2001 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

WILLIE L. BROWN, JR.
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

DOCUMENTS DEPT.

JAN - 4 2002

SAN FRANCISCO
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KHIN MAI AUNG
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
FREDERICK HOBSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:21 p.m.

II. Roll Call

Commissioners Present: Aung; Becker; Gruber; Hobson; Lightner;
Mosser; Wasserman.
Commissioners not Present: Marshall; Murphy.
Staff Present: Grubb; Wolf.

Commissioner Justman appeared on the record at 6:24 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 4, 2001.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Tenant Natividad Hernandez of 550 Leavenworth #2 (AT010180) said that the Memorandum from the Administrative Law Judge is based on the landlord's lies. She told the Board that the landlord has sued the tenants three times, and that they are the aggrieved parties. She claims not to have received compensation for moving expenses when the Memorandum says that she did.

V. Consideration of Appeals

A. 1775-1777 Yosemite/1760-70 Armstrong

AL010182

Twelve petitions were originally filed alleging, in part or in whole, unlawful rent increase, decreased housing services, and improper calculation of a utility passthrough. Subsequently, five petitions were withdrawn, and one of the consolidated petitions was severed and a separate decision was issued. All issues were withdrawn except the question of whether the subject live-work units are residential rental units within the jurisdiction of the Rent Board. The Administrative Law Judge found that the landlord or their agents rented the subject units with knowledge of residential use and consented to such use and, therefore, the units are subject to the Rent Ordinance. The landlord appeals, claiming that: it constituted error and abuse of discretion for the petitions to be heard solely on the issue of jurisdiction without any pending claims and actual controversies; and the units were



not "made available by agreement for residential occupancy", and therefore they are exempt.

MSC: To deny the appeal. (Becker/Aung: 3-2; Gruber, Lightner dissenting)

B. 735 Geary St., Apt. 504

AT010179

The tenant's appeal was filed one year late because the elderly tenant avers that she did not receive a copy of the decision or notification of the rent increase.

MSC: To find good cause for the late filing of the appeal.
(Becker/Aung: 5-0)

The landlord's petition for certification of capital improvement costs to 17 of 21 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Aung: 5-0)

C. 1959 Oak St. #2

AL010181

Rent increases based on increased operating expenses to the tenants in six units were granted but deferred due to the landlord's failure to repair, except as to the tenants in unit #2, who were the only tenants in the building to have received notice of the rent increase to take effect in September of 1999. The tenants' appeal alleging that their increase should also be deferred was accepted and remanded to determine whether code violations existed at the premises at the time these tenants' rent increase notice was to go into effect. The Administrative Law Judge found that the tenants had provided notice to the landlords of a window having been painted shut on October 12, 1999, and the increase was ordered deferred until October 1, 2001, when code violations in the building were ordered abated by the Department of Building Inspection. The landlords appeal the remand decision, asserting that: there were no outstanding Notices of Violation on the property in 1999; and repairs to the bedroom window were made effective October 15, 1999, with no subsequent notice to the owners as to a problem with a second window in the unit.

MSC: To recuse Commissioner Lightner from consideration of this appeal. (Gruber/Justman: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to determine whether code violations existed at the premises at the time the rent increase notice was to go into effect; all available evidence shall be accepted.
(Gruber/Justman: 3-1; Aung dissenting)

D. 550 Leavenworth #2

AT010180

The tenants' petition alleging the landlord's failure to repair and substantial decreases in housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$303.33. On appeal, the tenants maintain that: they should not have to pay rent for the period October 16, 200 to February 8, 2001 because there was construction in the building and the apartment was in a state of disrepair; the Administrative Law Judge did not consider their pictures or other documentary

evidence; the landlord owes them interest on their security deposit; and the landlord has subjected them to lawsuits and other forms of harassment.

Commissioner Aung noted for the record that many of the tenants' claims are outside of Rent Board jurisdiction.

MSC: To deny the appeal. (Gruber/Lightner: 5-0)

E. 857 Clay St. #217 & 305

The landlord's petition for rent increases based on comparable rents was granted because it was found that the tenants' rents were set low due to maintenance services they provided on the premises. On appeal, the tenants explain that they failed to attend the hearing because they are Chinese speakers, and could not read the Notice of Hearing. Additionally, the tenants assert that the landlord was not truthful in providing evidence and testimony at the hearing.

MSC: To accept the appeals and remand the case for a new hearing.
(Becker/Aung: 5-0)

F. 1411 Golden Gate

AL010183

The tenants' petition alleging an unlawful rent increase and decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$1,300.00 due to the temporary removal of a back staircase. Additionally, a proposed rent increase from \$1,597.94 to \$3,800.00 was not found to be warranted under Costa-Hawkins because the landlord had established a direct landlord-tenant relationship with the tenants and had not timely served notices pursuant to Rules Section 6.14. On appeal, the landlord claims that: the removal of the stairway occurred prior to three of the four tenants' residency on the premises, and therefore was not included as a housing service associated with their tenancy; the amount granted for the rent reduction should have corresponded with the amount of rent for the unit, which was unknown to the Administrative Law Judge; the trigger for a Costa-Hawkins increase should be whether the occupants were subtenants rather than co-tenants at the time they entered into possession of the unit, rather than at the time of the rent increase; acceptance of rent does not waive the owner's right to a Costa-Hawkins increase, and the landlord in this case did not receive written notice and thereafter accept rent; the occupants all moved in to the unit after January 1, 1996 pursuant to an agreement with the last remaining original tenant, and not the landlord; the landlord corresponded only with the last original tenant until after 6.14 notices had been served on the other occupants of the unit; and actions attributed to the prior landlord's agents were not sufficient to create a landlord-tenant relationship.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to determine the proportional share of the rent reduction that is owed only to the tenant(s) who actually suffered the decrease in services; the appeal is denied as to all other issues. (Lightner/Gruber: 4-1; Becker dissenting)

IV. Remarks from the Public (cont.)

B. Tenant Natividad Hernandez of 550 Leavenworth #2 (AT010180) inquired as to the significance of the Memorandum from the Administrative Law Judge and queried the Board as to her recourse now that her appeal had been denied.

C. Tenant Tiffany Moore of 1411 Golden Gate (AL010183 told the Board that other tenants in the unit had also been affected by the disrepair of the back stairs; and her roommate, Allan Kelly, inquired as to the disposition of the Costa-Hawkins aspects of their case.

VI. Communications

The Board received a copy of the appeal decision concerning the case at 1320, 1340, 1360 Lombard Street (AT010052 thru -89), for possible approval at the January 8, 2002 Board meeting.

VII. Director's Report

Deputy Director Wolf informed the Board that, regarding the case of Nantucket Ventures v. Rent Board (Superior Court Case No. 303-891), Judge Robertson denied the landlord's writ regarding a rent reduction for loss of storage space and granted the landlord's writ regarding the determination of the lawful rent and refund of rent overpayments. The Rent Board Commissioners had granted the landlord's appeal and remanded for a new hearing "only on the issue of the value of the storage space." However, after the landlord's provision of the rent history, rent overpayments in the amount of \$5,000.00 were determined to be owing. The court found that the decision on remand improperly exceeded the scope of the remand order, but did not reach any of the other legal arguments raised by the landlord in his writ.

VIII. New Business

Commissioner Mosser informed the Board that Ordinance No. 135-01 took effect on Thursday, December 13th. This legislation prohibits operators of residential hotels from charging visitor fees and provides that visitors to residential hotels may not be restricted except in accordance with a visitors' policy approved by the Single Room Occupancy Safety and Stabilization Task Force. The Rent Board will be charged with holding hearings to determine whether hotel policies are in compliance with the Task Force guidelines, but enabling legislation must be passed before the Board will be able to promulgate regulations. In the interim, landlords may file petitions, but they will not be acted upon.

IX. Calendar Items

December 25, 2001 & January 1, 2002 - NO MEETINGS

January 8, 2002

10 appeal considerations

Old Business:

- A. Proposed Amendment to Rules and Regulations Section 6.10(e) (Goodwin v. Rent Board {Superior Court Case No. 317339})
- B. Petition for Rules & Regulations Section 1.21 Determinations

X. Adjournment

President Wasserman adjourned the meeting at 7:55 p.m.

